

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:13-CR-221-CDP  
 )  
 DARYL WARREN, )  
 )  
 Defendant. )

JURY TRIAL

VOLUME 1

BEFORE THE HONORABLE CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

MARCH 4, 2014

**APPEARANCES:**

For Plaintiff: Cristian M. Stevens, AUSA  
Allison H. Behrens, AUSA  
**OFFICE OF U.S. ATTORNEY**  
111 South Tenth Street, 20th Floor  
St. Louis, MO 63102

For Defendant: Herman L. Jimerson, Esq.  
**JIMERSON LAW FIRM**  
225 S. Meramec, Suite 508  
Clayton, MO 63105

REPORTED BY: Gayle D. Madden, CSR, RDR, CRR  
Official Court Reporter  
United States District Court  
111 South Tenth Street, Third Floor  
St. Louis, MO 63102  
(314) 244-7987

INDEX

## Voir Dire

Examination by the Court . . . . .	Page 6
Examination by Mr. Stevens . . . . .	Page 106
Examination by the Court . . . . .	Page 108
Examination by Mr. Stevens . . . . .	Page 110
Examination by Mr. Jimerson . . . . .	Page 118
<i>Batson</i> challenge . . . . .	Page 137
Jury Instructions . . . . .	Page 144
Plaintiff's Opening Statement (excerpted)	
Defendant's Opening Statement (excerpted)	

*Witnesses:***RICHARD ZAYAS**

Direct Examination by Mr. Stevens . . . . .	Page 155
Cross-examination by Mr. Jimerson . . . . .	Page 228
(continued to 3/5/2014)	

1 (Proceedings began at 8:47 a.m.)

2 (The following proceedings were held in open court and  
3 with the Defendant present.)

4 (The following proceedings were held outside the hearing  
5 and presence of the jury panel.)

6 THE COURT: All right. We're here in the case of  
7 United States of America versus Daryl Warren, Case No.  
8 4:13-CR-221, and Mr. Warren is here with his attorney,  
9 Mr. Jimerson, and the United States is here through  
10 Mr. Stevens and Ms. Behrens, and, you know, we were here all  
11 day yesterday doing, I guess, extended pretrial things, and so  
12 we're ready to begin selecting the jury this morning. What,  
13 if anything, do we need to discuss before we begin? And  
14 before I say that, I did notice the Government filed a witness  
15 list and exhibit list. I printed them out and then forgot to  
16 bring them in, but --

17 MR. STEVENS: I have copies. Do you want a copy?

18 THE COURT: Okay. Yeah. If you'll provide the clerk  
19 with copies, that'd be good.

20 MR. STEVENS: Sure.

21 THE COURT: Mr. Jimerson.

22 MR. JIMERSON: Nothing, nothing, Your Honor. I think  
23 we're ready.

24 THE COURT: You think we're ready?

25 MR. JIMERSON: Yes, Your Honor.

1 THE COURT: Okay. We didn't -- I don't know if we  
2 discussed the rule excluding witnesses, but I assume we want  
3 that invoked?

4 MR. JIMERSON: Yes, ma'am.

5 THE COURT: Okay. And you all need to pay attention  
6 because I don't know who your witnesses are, and so if they  
7 walk in the back of the courtroom -- and especially from the  
8 Government's side, you've got lots of people here looking --  
9 if you see someone who's a witness.

10 Now, you've got two people sitting at counsel table.  
11 Who are these two people?

12 MR. STEVENS: They're both agents with ATF, Judge.  
13 Agent Hoffman has been the local case agent on this case, and  
14 Agent Johnson is out of Mississippi. He was here last summer  
15 and was the case agent at the time.

16 THE COURT: Which one is going to be your  
17 representative to sit through trial?

18 MR. STEVENS: It would be Agent Johnson if we had to  
19 choose one of the two, Judge. Would you mind?

20 THE COURT: Well, are you asking to have two?

21 MR. STEVENS: Yes.

22 THE COURT: Yeah. No. I mind. You can only have  
23 one.

24 MR. STEVENS: Okay. All right.

25 THE COURT: So you need to pick one. That's the

1 rule.

2 MR. STEVENS: Okay. All right. Thank you, Judge.

3 THE COURT: Now, what else? Anything else we need to  
4 discuss? Did you do any changes? You mentioned changes to  
5 jury instructions.

6 MR. STEVENS: We haven't done the jury instructions  
7 yet, Judge. What it was is changing up our video.  
8 Obviously --

9 THE COURT: Oh, okay.

10 MR. STEVENS: -- we aren't going to be playing, you  
11 know, all the Robert Washington video.

12 THE COURT: Okay. Right.

13 MR. STEVENS: Yeah, yeah. And we also got  
14 Mr. Jimerson the clip that he had requested yesterday, so he's  
15 ready there. Our person will be prepared to play it for him.

16 MR. JIMERSON: Yes, ma'am.

17 THE COURT: Okay. All right. That sounds fine.  
18 Well, then we'll begin as soon as the jury is available.

19 (Court recessed from 8:49 a.m. until 9:12 a.m.)

20 (The following proceedings were held outside the hearing  
21 and presence of the jury panel.)

22 THE COURT: All right. You may bring in the jurors.

23 (The following proceedings were held within the hearing  
24 and presence of the jury panel.)

25 THE COURT: All right. Good morning, ladies and

1 gentlemen, and the first order of business is for me to  
2 apologize for making you all come and wait yesterday when you  
3 weren't used, and I really appreciate your being back here  
4 today to start this jury selection. We had some unavoidable  
5 delays. Judge Sippel told me to -- well, he chastised me  
6 because he said he promised you that you wouldn't come and sit  
7 and wait when you weren't needed and then I did that to you  
8 yesterday, so I apologize. It was unavoidable. I would not  
9 have done it otherwise, but now we are ready to begin, and I  
10 appreciate you all being back here today.

11 We are going to begin the jury selection in this  
12 case. It is a criminal case, and I will tell you more about  
13 it as we go along; however, the first thing we will do is we  
14 will administer an oath to you as members of the jury panel,  
15 and in this oath, you are promising that you will tell the  
16 truth in answering our questions. As with all oaths in our  
17 court, if for some religious or personal reasons you do not  
18 believe in taking an oath, which is where you say, "So help me  
19 God," you may simply say, "I affirm," and that is affirming  
20 under penalty of perjury that your answers are true. It's  
21 exactly the same thing as taking an oath, but some people do  
22 not wish to take oaths, and so that's why we have this penalty  
23 of perjury. It means exactly the same thing legally. So at  
24 this time I would ask you to stand and to be administered the  
25 oath.

1 (Jury panel sworn.)

2 THE COURT: All right. Now, just so you know, we  
3 have a list and the lawyers have it, too, and that's why you  
4 have these numbers. Every word we say is taken down by the  
5 court reporter here, and the list gives us the following  
6 information. It tells us your name, your city and county of  
7 residence, and how long you've lived there and whether you  
8 rent or own, or sometimes it says, "Live with homeowners." It  
9 tells us your highest level of education. It might say  
10 twelfth grade, college grad, some college, something like  
11 that. It tells us your occupation and your employer and prior  
12 employer and your spouse's employer or prior employer, and it  
13 tells us the number of children you have. It doesn't tell us  
14 anything else about them. This is what -- the information we  
15 have, and so we won't be asking you this same information, but  
16 that's part of why we have this musical chairs business of  
17 trying to make sure you're all seated in the right order, so  
18 we can keep track of you as we're asking you these questions.  
19 I'll ask you the first group of questions, and then the  
20 lawyers will have an opportunity to also ask you questions.

21 The first thing I -- well, the first thing I want to  
22 do is tell you what this case is. This is a criminal case  
23 brought by the United States against the Defendant, Daryl  
24 Warren, and there are three counts charged against him, and  
25 you will hear more about those as the time goes on.

1 I will start, though, by asking the United States  
2 Attorneys to introduce themselves and their case agent.

3 MR. STEVENS: Thank you, Judge. Good morning. My  
4 name is Cristian Stevens. I'm an Assistant U.S. Attorney here  
5 in St. Louis. I'm here with my colleague, Allison Behrens,  
6 also an Assistant U.S. Attorney, and we're here with Special  
7 Agent Rusty Johnson of the Bureau of Alcohol, Tobacco,  
8 Firearms and Explosives or ATF.

9 THE COURT: Thank you. Does anyone know Mr. Stevens  
10 or Ms. Behrens of the U.S. Attorney's Office?

11 Does anyone know Mr. Johnson, the ATF agent?

12 All right. And then, Mr. Jimerson, I'll ask you to  
13 introduce yourself and your client.

14 MR. JIMERSON: Thank you, Your Honor. My name is  
15 Herman Jimerson. I'm an attorney in St. Louis. My client is  
16 Mr. Daryl Warren. Mr. Warren is a citizen of south St. Louis  
17 city.

18 THE COURT: All right. Thank you. Does anyone know  
19 Mr. Jimerson, the defense attorney, or Mr. Warren, the  
20 Defendant in the case?

21 All right. I will tell you more about the case as we  
22 go along, but I'm going to start with the very beginning of  
23 our criminal justice system. This is in our Constitution, and  
24 it's the essence of our -- the rule of law in this country,  
25 and that is that any person charged with a crime in this



1 country is presumed innocent unless and until they might be  
2 proven guilty by the Government beyond a reasonable doubt. In  
3 other words, the Government can't take anybody and, you know,  
4 charge -- convict them of a crime without proof beyond a  
5 reasonable doubt, and that presumption of innocence was  
6 written into our Constitution by the fathers who wrote it  
7 because -- our forefathers, I guess we call them -- because  
8 they considered it so very important, and so what that means  
9 is if I were -- so does everybody understand generally the  
10 presumption of innocence? And what it means is if I were  
11 to -- you know, assuming you knew what he was charged with and  
12 a little more stuff about the case, but if I were to ask you  
13 right now, is Mr. Warren guilty or not guilty, there's only  
14 one way you could vote, and that would be not guilty because  
15 there's been no evidence presented against him. He has had no  
16 evidence whatsoever presented against him, and unless the  
17 Government can overcome that, that presumption of innocence,  
18 you must find him not guilty even after you've heard all the  
19 evidence unless you -- you know, unless the Government's  
20 overcome that. Does everyone understand that? All right.  
21 Thank you.

22 Now I want to start with reading you an instruction  
23 that I have to read you because in today's world we are all so  
24 connected that there have been many incidents involving jurors  
25 and social media or somehow talking about the case on the

1 Internet or otherwise, that we now are required to tell you  
2 not to do that, and I'm going to tell you in some detail, and  
3 so, first, I will say this. If you have a cell phone of any  
4 sort or any other wireless communication device with you,  
5 including an iPad or anything, anything else, please take them  
6 out now and turn them off. Don't just turn them to vibration  
7 or silence. Please power them completely down, and whenever  
8 you're in the courtroom, these devices must remain turned off,  
9 although it is fun listening to all the different ringtones  
10 that people have sometimes on their phone, but we need them  
11 off in the courtroom. This rule is as important -- even  
12 though this sounds kind of silly, sometimes the cell phones,  
13 even when they're -- sometimes even when they're turned off,  
14 interfere with our electronic system, but it's also just  
15 because we need to be sure that there is no interruption in  
16 court and that nothing is being recorded or photographed, of  
17 course.

18 In this court, we do allow you to keep your cell  
19 phones with you, and I allow you to have them even when you're  
20 deliberating, although you're not supposed to be talking to  
21 people outside the jury room, and I -- you know, but we don't  
22 tell you you can't bring them in the courtroom. We like you  
23 to keep them, but you can use them at breaks and things, and  
24 we do know that many of you do use these tools of technology,  
25 including your cell phones, throughout the day.

1           What is important is that you not discuss this case  
2 at all, either by talking to someone about it or by texting or  
3 calling or putting any postings online, anything at all about  
4 the case. I do understand you may want to tell your family  
5 and friends or other people about your participation in the  
6 trial, so you can explain why you're not at work and when  
7 you're required to be here in court, and so what you can tell  
8 people is that you are on a -- if you are selected to be on  
9 this jury, you can tell people that you are on the jury and  
10 that you cannot discuss it at all but you can talk to them  
11 about it at the end of the week when it's all over but that  
12 you do have to be here.

13           So it is essential that you not discuss the case with  
14 anyone even during this jury selection process, and once the  
15 jury is selected, I'll give you more instructions, but in the  
16 meantime, if your family or friends should ask you, you should  
17 warn them not to ask you about the case or tell you anything  
18 they know or think they might know about the case or to  
19 discuss the case in your presence. You must not post any  
20 information on any social network or communicate with anyone  
21 about the parties, witnesses, participants, claims, evidence,  
22 or anything else related to the case or tell anyone anything  
23 about the jury's deliberations in the case until after I have  
24 accepted your verdict. If you were to discuss the case with  
25 someone else, you could be influenced in your verdict by their

1 opinions or even by their questions, and that would not be  
2 fair to the parties, and it would result in a verdict that is  
3 not based on the evidence and the law.

4 While you are in the courthouse and until you are  
5 discharged in the case, do not provide any information to  
6 anyone by any means about the case. For example, do not talk  
7 face-to-face or use any electronic device or media such as a  
8 telephone, smartphone, cell phone, camera, recording device,  
9 any Internet or Internet service or instant messaging service  
10 or Twitter, Facebook, YouTube, any other way, until I have  
11 accepted your verdict and you've been excused as a juror.

12 Additionally, you may not do any research while the  
13 case is going on, and we used to just have to tell people you  
14 can't look at the newspapers and you can't look things up in  
15 dictionaries because that's a very important part of the law.  
16 I will tell you what the law is in the case, and you're not  
17 allowed to do further research, but now we also have to tell  
18 you not to do any research on the Internet or in libraries, in  
19 newspapers or any other way, and you may not make any  
20 investigation about the case on your own.

21 Do not view or visit any place that may be discussed  
22 in the case, and don't use any Internet programs or other  
23 devices to search for or view any place that's discussed in  
24 the testimony. I assure you that if it's important for you to  
25 see, you know, views of things that that will be provided to

1 you in the evidence. Also, don't research any of the -- any  
2 information in the case about the law or the people involved,  
3 including the parties, the witnesses, the lawyers, or even me  
4 until you've been excused as jurors, and the parties have a  
5 right to have the case decided only on the evidence that they  
6 know about and that has been presented here in court and they  
7 have the opportunity to cross-examine or challenge. If you do  
8 some research or investigation or experiment we don't know  
9 about, then your verdict may be influenced by inaccurate,  
10 incomplete, or misleading information that has not been tested  
11 by the trial process, including the oath to tell the truth and  
12 by cross-examination. Each of the parties is entitled to a  
13 fair trial rendered by an impartial jury, and you must conduct  
14 yourself so as to maintain the integrity of the trial process.  
15 If you decide a case based on information that was not  
16 presented in court, you will have denied the parties a fair  
17 trial in accordance with the rules of this country and you  
18 will have done an injustice. It is very important that you  
19 abide by these rules. Failure to follow these instructions  
20 could result in the case having to be retried.

21 So that's the instruction I'm required to give you  
22 that is extremely important in today's world, and I -- you  
23 know, you all -- most people probably don't follow this.  
24 Judges follow it intently. We are increasingly reading of  
25 cases where there has been a mistrial declared or a result in

1 a case set aside and the trial have to be redone because  
2 jurors communicated in some way, even doing things like  
3 sending out an email or a Twitter or a Facebook post that  
4 says, "We're going to reach a verdict tomorrow; you should be  
5 paying attention" or something like that. That's improper,  
6 and if you did anything like that, it would be -- it would be  
7 grounds for all sorts of things, including, you know, I guess  
8 I could hold you in contempt of court, but I've never done  
9 that, but there are real repercussions to the system of  
10 justice, so please don't do that.

11 Now, I've discussed this issue with my own children  
12 who are young adults, and what they tell me when I talk to  
13 them about these rules is that they would have a really hard  
14 time abiding by it. They don't understand why we do it. They  
15 don't understand why we have the Rules of Evidence. The Rules  
16 of Evidence have been developed over hundreds of years, and  
17 they've been tested and approved by various courts over time,  
18 and they're what we have to ensure fairness in our court.

19 So I guess what I want to know from you all -- is  
20 there anybody here who, like my children, is so addicted to  
21 the Internet that they could not follow this instruction if I  
22 tell them not to do it? Anybody who couldn't do it?

23 All right. Thank you. I do appreciate your agreeing  
24 to do that.

25 Now, what's this case about? Mr. Warren is charged

1 in an indictment, and he's charged with three counts, and one  
2 is a conspiracy to possess with intent to distribute cocaine,  
3 one is possessing a firearm in furtherance of a drug  
4 trafficking crime, and one is having been a previously  
5 convicted felon in possession of a firearm. Knowing that,  
6 only that, is there anyone here who thinks they know anything  
7 about this case? And I will tell you that these events are  
8 alleged to have occurred in and around May and June of last  
9 year, 2013, in the city of St. Louis. Anybody here who thinks  
10 they know anything about the case?

11 All right. Thank you.

12 Now I want to start just by asking about jury  
13 service, and I'm going to just -- all the questions I ask you  
14 today, we're going to answer by rows, so I can keep track of  
15 who is saying what. So we'll start with the first row back  
16 here, which is numbers 1 through 6, but I'll go through and  
17 ask you all these questions.

18 The first question I want to know is whether at any  
19 time in your life you have ever actually been selected to  
20 serve on a jury in any court. Numbers 1 through 6, anyone  
21 who's actually been selected to serve on a jury?

22 All right. #3, can you tell me -- Ms. French, can  
23 you tell me about when you were selected to serve on a jury?  
24 How long ago and what court?

25 JUROR #3: It was probably about 30 years ago, 35

1 years ago.

2 THE COURT: Okay. And where was it?

3 JUROR #3: I had lived in the city. It's one of  
4 these court buildings.

5 THE COURT: Right.

6 JUROR #3: It was the one with big brown doors.

7 THE COURT: Yeah. Actually, that's -- it was  
8 probably the state court. Does that make sense? I mean  
9 there -- we've only been in this building since 2001, and we  
10 were sort of -- let's see -- across the street. I get my  
11 directions screwed up, but that way, I guess, and there's  
12 several courthouses right there, but -- so you were in one of  
13 those courthouses?

14 JUROR #3: (Nods head up and down.)

15 THE COURT: Do you remember if it was a civil or a  
16 criminal case?

17 JUROR #3: It was about theft.

18 THE COURT: About theft. Okay. And do you  
19 remember -- and I don't want to know the results of any  
20 decisions, but do you remember if the jury actually reached a  
21 verdict in the case?

22 JUROR #3: Uh-huh, yes.

23 THE COURT: Were you the foreperson?

24 JUROR #3: No, no, ma'am.

25 THE COURT: Okay. Thank you.



1           Anyone else on that row who's been on a jury?

2           All right. And then the next row, anyone here who's  
3           been actually selected to serve on a jury?

4           I see a few of you. Yes. So, #8, Ms. -- is it  
5           Rothery?

6           JUROR #8: Yes.

7           THE COURT: Tell me when and where your prior jury  
8           service was.

9           JUROR #8: Probably in the eighties. I've been on  
10          three juries -- one criminal, two civil, and I was the  
11          foreperson for one of them.

12          THE COURT: Did they all result in decisions by the  
13          jury?

14          JUROR #8: One was settled prior to, and the other  
15          two did come to a jury decision.

16          THE COURT: Okay. Thank you. And then #9,  
17          Ms. Roberts, tell me about your prior jury service.

18          JUROR #9: It was probably about five years ago,  
19          state court, and it was involving an accident.

20          THE COURT: Okay. And was that in the St. Louis  
21          County?

22          JUROR #9: Yes.

23          THE COURT: Okay. So it was like a car wreck?

24          JUROR #9: Correct.

25          THE COURT: Okay. So that would have been a civil

1 case, I take it?

2 JUROR #9: Yes.

3 THE COURT: Yeah. Okay. And did the jury actually  
4 decide the case?

5 JUROR #9: Yes.

6 THE COURT: Were you the foreperson?

7 JUROR #9: No.

8 THE COURT: All right. Thank you.

9 And let's see. Ms. Schneider, did you have your hand  
10 up?

11 JUROR #10: Yes.

12 THE COURT: All right. Could you tell me when and  
13 where your prior jury service was?

14 JUROR #10: It was like a year ago in the St. Charles  
15 County.

16 THE COURT: And was it civil or criminal, if you  
17 remember?

18 JUROR #10: Well, I guess it was -- I don't remember.

19 THE COURT: What was the case about?

20 JUROR #10: Drugs.

21 THE COURT: Drugs. Okay. And so that would normally  
22 be a criminal case --

23 JUROR #10: Criminal.

24 THE COURT: -- most likely. Did the jury actually  
25 decide the case?

1 JUROR #10: Yes.

2 THE COURT: Okay. Were you the foreperson?

3 JUROR #10: No.

4 THE COURT: All right. Thank you.

5 JUROR #10: Do you need to go back further because I  
6 was on another one?

7 THE COURT: Yeah, yeah, I'd like to know about the  
8 others, too.

9 JUROR #10: Okay. Well, it was probably about 30  
10 years ago.

11 THE COURT: Thirty -- I'm sorry.

12 JUROR #10: About 30, somewhere in there.

13 THE COURT: Okay.

14 JUROR #10: And that was down here, too, in the city.

15 THE COURT: Okay.

16 JUROR #10: And we did reach a verdict and --

17 THE COURT: Do you remember if it was criminal or  
18 civil?

19 JUROR #10: It was a rape.

20 THE COURT: That would be -- that would normally be a  
21 criminal case, although it could also be civil, but that's  
22 probably right. Okay. And so the jury did reach a verdict?

23 JUROR #10: Yes.

24 THE COURT: And you were not the foreperson that  
25 time?

1 JUROR #10: Well, you know, I don't remember. I'm  
2 sure I wasn't.

3 THE COURT: But you don't remember really?

4 JUROR #10: No.

5 THE COURT: Okay. That's fine.

6 Then people on the front row, any of you all ever  
7 actually been selected to serve on a jury?

8 Yes, #14, Ms. Dooley. Oh, yeah, I have another  
9 question for you, Ms. Dooley, because I think you know  
10 somebody in the courtroom or not in the courtroom anymore.  
11 You know the court clerk who was -- who led you all up here,  
12 right?

13 JUROR #14: Yes.

14 THE COURT: Okay. But tell me about your jury  
15 service.

16 JUROR #14: It was in Clayton. I think it was around  
17 2006, a criminal case. We did reach a decision, and I was not  
18 the foreperson.

19 THE COURT: Okay. So let me -- since I'm talking to  
20 you now and because Carol did tell me that she knew you, as I  
21 understand it, your -- your sister is one of her close  
22 friends, is that right?

23 JUROR #14: Yes.

24 THE COURT: And so as she's -- throughout this trial,  
25 there will be various people who will be -- and I'll tell this

1 to all of you. There will be various people working for the  
2 court who will sort of be helping you out or in charge of you  
3 or doing what they need to do, and this is Brittany Porter,  
4 who will be mostly handling the trial, but there are two other  
5 people who also work in -- with me in the courtroom, and  
6 they're Carol Long and Melanie Berg. Aside from Ms. Dooley  
7 knowing Carol Long, does anyone here know any of those other  
8 people?

9 All right. Let me just ask you this, Ms. Dooley.  
10 Would that affect your decision in any way in -- the fact that  
11 you are acquainted with her?

12 JUROR #14: I don't think so, no.

13 THE COURT: You don't think it would make you favor  
14 one side or the other in the case?

15 JUROR #14: No.

16 THE COURT: All right. Thank you.

17 And so let's see. Anybody else there who was on a  
18 jury in this group?

19 Yes, #26. I think that's about knowing someone,  
20 right?

21 JUROR #26: Yes.

22 THE COURT: Tell me who you know.

23 JUROR #26: Deneen. She's down --

24 THE COURT: You know Deneen, the jury clerk?

25 JUROR #26: Yes, that's who it is.

1 THE COURT: Okay. That's interesting because  
2 that's -- you know, you've certainly dealt with her, I know,  
3 and how do you know Deneen?

4 JUROR #26: She grew up just right up the street from  
5 me.

6 THE COURT: Do you all see -- have you all seen each  
7 other much as adults?

8 JUROR #26: I haven't seen her in 20 years.

9 THE COURT: Well, would your knowing her have any  
10 effect on your ability to decide this case fairly?

11 JUROR #26: No, Your Honor.

12 THE COURT: All right. Thank you.

13 And you know when I ask you that question about would  
14 it affect your ability to decide this case, what we're really  
15 asking of jurors is that you come into court with an open  
16 mind, that you listen to the evidence, and that you decide the  
17 case based on the evidence and the law that I'll give you and  
18 not on anything else, and we're asking for you to start with a  
19 level playing field. In other words, give the Government and  
20 the Defendant the same opportunity for a fair trial, listen to  
21 the evidence, and decide it fairly without favoring one side  
22 or the other. In other words, if I'm going to -- everybody  
23 makes fun of my sports analogies because I get them screwed up  
24 sometimes, but, you know, if it's a level playing field,  
25 there's no home team here, right? You -- your -- you don't

1 have -- it's like watching a game you don't care who wins.  
2 You need to base it on what you believe is right in the case  
3 and what you hear from the evidence and the law. Everybody  
4 understand that? Anybody who has problems with that? All  
5 right. And that's what I mean when I say can you be fair.

6 Okay. Let me go back to jury selection. Yes, ma'am.

7 JUROR #10: When I was picked, I was an alternate. I  
8 don't know if that matters.

9 THE COURT: Okay. Did you actually end up sitting on  
10 the case?

11 JUROR #10: Yes.

12 THE COURT: Yeah. So you were an alternate  
13 initially, but then you were seated?

14 JUROR #10: Right. Somebody ended up the next day  
15 got excused for whatever reason, and I was the first  
16 alternate.

17 THE COURT: And that's something I would want to talk  
18 about. We will probably pick -- well, we will have 12 jurors  
19 on the case and probably one or maybe two alternates in the  
20 case. Alternate jurors are very important because you -- it's  
21 not unusual that something happens and they end up sitting, so  
22 once -- if you're picked as an alternate, you just, you know,  
23 assume you're a juror until you're told otherwise because it  
24 may happen.

25 The -- but we do have 12-person juries in felony

1 cases such as this, and for a decision to be reached in the  
2 case, whether it's guilty or not guilty, the decision must be  
3 unanimous. Some people disagree with that rule of law. They  
4 think it should be majority rules, but it's not. It's got to  
5 be unanimous in the case. Is there anybody here who disagrees  
6 with that rule of law?

7 All right. Thank you.

8 Now I'll go back to jury service and ask the people,  
9 numbers 17 through 20, have any of you all previously been  
10 selected to serve on a jury? #18, Mr. Camenzind?

11 JUROR #18: Perfect.

12 THE COURT: Okay. So tell me when and where your  
13 prior jury service was.

14 JUROR #18: It was in 1994. It was in St. Louis, and  
15 it was a criminal trial.

16 THE COURT: And did the jury actually reach a  
17 decision?

18 JUROR #18: We did.

19 THE COURT: Were you the foreperson?

20 JUROR #18: I was.

21 THE COURT: Can you tell me what type of case it was?

22 JUROR #18: It was a rape case.

23 THE COURT: Okay. Thank you.

24 All right. Then the next group over here, numbers 21  
25 through 27, any of you all ever actually been selected to



1 serve on a jury?

2 THE CLERK: There's another one.

3 THE COURT: Oh, sorry. I'll come back to you then.

4 Let me make a note here, #20. Let me come to you,  
5 Ms. Burns. Tell me about yours.

6 JUROR #20: It was about 15, 18 years ago, in  
7 Hillsboro, and it was a civil case, I believe, and we didn't  
8 reach a verdict because we were about halfway into the trial  
9 and something happened or was said and the judge dismissed us.

10 THE COURT: Okay. So it ended before the jury got  
11 the case to decide?

12 JUROR #20: Right.

13 THE COURT: All right. Thank you.

14 Now I'll go over here. #27, Mr. Orban?

15 JUROR #27: Yes, ma'am.

16 THE COURT: Tell me when and where your prior jury  
17 service was.

18 JUROR #27: November 2012, right across the hallway.

19 THE COURT: Here on the 14th floor?

20 JUROR #27: Yep.

21 THE COURT: In Judge Jackson's court?

22 JUROR #27: Yeah.

23 THE COURT: Okay. So what was the -- was it civil or  
24 criminal?

25 JUROR #27: It was a civil case. The jury did reach

1 a verdict, and I was not the foreperson.

2 THE COURT: Okay. Thank you.

3 All right. Now let me go to the next group, which is  
4 numbers 28 through 31 over here. Yes, #28. And if you don't  
5 mind, Mr. Gray, I'm going to ask you to stand up because it's  
6 hard for the court reporter to see you.

7 JUROR #28: No problem.

8 THE COURT: So tell me when and where your prior jury  
9 service was.

10 JUROR #28: It was about five years ago, city of  
11 St. Louis, employee theft. It was criminal. We did reach a  
12 verdict, and I was the foreman.

13 THE COURT: You were the foreperson. Thank you.  
14 Thanks. You may be seated.

15 Anyone else on that row?

16 All right. And the last row here in the middle,  
17 numbers 32 through 36, anyone there actually selected? Oh, we  
18 got a home run almost. So -- see, I'm doing it again. That  
19 doesn't work, does it?

20 Mr. Streicher, would you tell me when and where your  
21 jury service was? Oh, wrong one. You're the one person who  
22 didn't hold up his hand.

23 Mr. Pulley, would you tell me when and when your jury  
24 service was?

25 JUROR #32: Jefferson County, about 17 years ago, a

1 personal injury lawsuit. I was not the foreman.

2 THE COURT: And the jury did decide the case?

3 JUROR #32: Yes.

4 THE COURT: All right. Thank you.

5 Now, Mr. Baybo, did you have your hand up?

6 JUROR #34: Yes, ma'am.

7 THE COURT: Would you tell me when and where your  
8 jury service was?

9 JUROR #34: Approximately eight years ago in Clayton.  
10 It was a criminal case. I was the foreman, and we did not  
11 reach a verdict.

12 THE COURT: Was it a hung jury?

13 JUROR #34: Yes.

14 THE COURT: All right. Thank you. And then let's  
15 see. Ms. Masterson, did you have your hand up?

16 JUROR #35: Yes, I did.

17 THE COURT: And tell me when and where your jury  
18 service --

19 JUROR #35: A little over a year ago, in the city of  
20 St. Louis. It was a criminal case. We did reach a verdict,  
21 and I was not the foreperson.

22 THE COURT: All right. And then, actually,  
23 Ms. Hayden, I said there was only one person who didn't, but I  
24 think you didn't have your hand up either, did you?

25 JUROR #36: No, no.

1 THE COURT: All right. Thank you.

2 Okay. All right. Now, for the -- yeah.

3 THE CLERK: #8.

4 THE COURT: Oh, I'm sorry.

5 JUROR #8: I wanted to clarify. The criminal case we  
6 had, there were several charges, and we did hang on the one  
7 charge, but we did come to a verdict on the other.

8 THE COURT: Okay. So -- and that can happen, so a  
9 jury can reach a decision on some charges but not all the  
10 charges, and that's what happened in your case?

11 JUROR #8: Correct.

12 THE COURT: Okay. Thank you.

13 Now, is there anybody here who has previously served  
14 on a jury where there's something about that prior jury  
15 service that you think would make it difficult for you to  
16 decide this case fairly?

17 All right. Thank you.

18 Now, there will be witnesses. There's a witness  
19 list, but I'm going to let the lawyers read that to you to see  
20 if you know any of the people involved in the case.

21 I now want to ask you about your involvement with --  
22 I guess I'll start with substance abuse or -- well, let me  
23 start with the criminal justice system, and I'm going to ask  
24 these questions. Here's what I'm going to ask. I'm going to  
25 ask you about your friends and family members who have --

1 have -- or yourselves -- who have been involved with the  
2 criminal justice system as defendants. I'm going to ask you  
3 about your relationships with police officers and law  
4 enforcement, whether you grew up in a law enforcement family  
5 and things like that. I'm also going to ask -- because this  
6 case does involve controlled substances, I'm going to ask you  
7 about friends and family members or yourselves involved with  
8 substance abuse, and I will also ask you some questions about  
9 firearms because it's a firearms case, and so I want you to  
10 know we ask these questions in all cases, and when I start  
11 with the people in your family who are involved in criminal --  
12 in criminal cases as defendants, you know, I guess I like to  
13 preface this by saying that it's -- it's -- there are a huge  
14 percentage of American families who have someone who has been  
15 involved in the criminal justice system, and so I please hope  
16 you won't be embarrassed or feel like I'm picking on you by  
17 asking you these questions, and this is the time when I  
18 usually start telling people about my cousin who's been in and  
19 out of jail most of his life, but we don't have to give you  
20 all those stories and -- but if there is anything I should ask  
21 here that, for some reason, you do not feel comfortable  
22 answering in open court, you may approach sidebar and answer  
23 it here at sidebar. The lawyers will come up, and we'll hear  
24 what you say, and it will be on the record so that we will  
25 have a full record, but if there's anything like that -- and

1 because of the nature of this case, I don't think that will  
2 happen, but if there is, let me know.

3 But the very first question I want to ask is if  
4 there's any one of you on the panel who have yourselves ever  
5 been convicted of a felony crime, and a felony crime is one  
6 where you -- where the punishment could be more than a year in  
7 jail. Anyone here who has actually been convicted of a  
8 felony?

9 All right. Thank you.

10 Now I'm going to ask about your friends and family  
11 members, and I really want this to be fairly broad and ask if  
12 you have friends and family members who have been involved in  
13 the criminal justice system as a defendant, whether they're  
14 currently facing charges, they were in jail in the past, they  
15 served time, they were charged with something but didn't  
16 actually go to jail. Anyone who -- and when I say friends and  
17 family, I would include people that you believe you're close  
18 to, so close friends, close relatives.

19 So anyone in the back row, have you had friends and  
20 family members involved in the criminal justice system as a  
21 defendant? Anyone there?

22 All right. In the next row, #7, close friends or  
23 family members involved? Yes, #8.

24 JUROR #8: A brother-in-law.

25 THE COURT: Your brother-in-law?

1 JUROR #8: Uh-huh.

2 THE COURT: And what was his -- what was he charged  
3 with?

4 JUROR #8: I guess a DUI.

5 THE COURT: DUI?

6 JUROR #8: Recreational vehicle. And because it had  
7 been in a certain interval, he ended up having to go to jail  
8 for --

9 THE COURT: Okay. He had more than one in a certain  
10 period of time?

11 JUROR #8: Right.

12 THE COURT: Okay. Do you have an opinion about how  
13 he was treated by the criminal justice system -- fairly,  
14 unfairly, neutral, whatever?

15 JUROR #8: He did it.

16 THE COURT: Yeah. Okay. So you don't have any  
17 strong feelings one way or another?

18 JUROR #8: No. I mean he -- you know.

19 THE COURT: He was guilty of what happened?

20 JUROR #8: Yeah.

21 THE COURT: Yeah. Okay.

22 JUROR #8: I mean they followed all the rules and did  
23 everything they should.

24 THE COURT: Okay. And there was someone else on that  
25 row? Ms. Roberts? Yes.

1 JUROR #9: A cousin.

2 THE COURT: And can you tell me what your cousin was  
3 charged with?

4 JUROR #9: Assaulting a police officer.

5 THE COURT: And was he convicted of that?

6 JUROR #9: Yes.

7 THE COURT: Did he do time?

8 JUROR #9: Yeah, he's currently serving time now.

9 THE COURT: He's currently in. Can you tell me where  
10 he's in jail?

11 JUROR #9: I don't know exactly.

12 THE COURT: Okay. Is it in Missouri?

13 JUROR #9: Yes, ma'am.

14 THE COURT: And how long ago did the incident happen?  
15 Do you know?

16 JUROR #9: He was convicted last year.

17 THE COURT: Okay. Do you -- do you have an opinion  
18 about how he was treated by the criminal justice system?

19 JUROR #9: No, I don't.

20 THE COURT: Have you been to visit him in jail?

21 JUROR #9: No.

22 THE COURT: Okay. Thank you.

23 Someone else on that row had their hand up?

24 All right. Then the front row, numbers 12 through  
25 16, friends and family members involved in the criminal



1 justice system?

2 Yes, ma'am, Ms. Prince.

3 JUROR #12: My best friend's husband was charged with  
4 child pornography.

5 THE COURT: And was that charge here in federal  
6 court?

7 JUROR #12: Well, he -- nothing's happened in court.  
8 I mean he was just charged with it, and it's still ongoing.

9 THE COURT: So let me see if I can sort of surmise  
10 what might have -- did they -- did somebody come to his house  
11 and actually arrest him?

12 JUROR #12: Yes.

13 THE COURT: Okay. And then he's still waiting to  
14 find out what would happen?

15 JUROR #12: Yeah. I mean he went to jail for a  
16 couple of weeks, and she got him out, and he's doing like the  
17 therapy and stuff, and I don't think he's been back to court  
18 yet for anything.

19 THE COURT: Okay. And do you know where he's  
20 charged, which court that is?

21 JUROR #12: St. Charles County.

22 THE COURT: St. Charles County. Okay. Thank you.  
23 Do you have any opinion about how he's being treated by the  
24 criminal justice system?

25 JUROR #12: As far as I know, fine. She doesn't -- I

1 mean I don't pry too much, but --

2 THE COURT: Yeah. So you don't have much of an  
3 opinion one way or another?

4 JUROR #12: No.

5 THE COURT: All right. Thank you.

6 And someone else on that row had their hands up?  
7 Yes, #15, Mr. Hochecker?

8 JUROR #15: Hochecker.

9 THE COURT: Hochecker. Okay.

10 JUROR #15: My nephew, possession charge.

11 THE COURT: Of drugs?

12 JUROR #15: Yes.

13 THE COURT: And do you know what -- what drug it was?

14 JUROR #15: Marijuana.

15 THE COURT: And how long ago did that happen?

16 JUROR #15: Been a year ago.

17 THE COURT: Did -- do you know what happened to him  
18 or where --

19 JUROR #15: He's on parole. That's all I know.

20 THE COURT: Yeah. Did he actually serve any time in  
21 jail?

22 JUROR #15: A week or so, I think.

23 THE COURT: Okay. And how do you think he was  
24 treated by the criminal justice system?

25 JUROR #15: I really don't have an opinion.

1 THE COURT: Okay.

2 JUROR #15: I didn't -- I wasn't there through it.

3 THE COURT: All right. Thank you. Did that happen  
4 here in town or here in St. Louis area or elsewhere?

5 JUROR #15: It was in the St. Louis area.

6 THE COURT: Okay. Anybody else that I missed on this  
7 group?

8 All right. The next group of people, numbers 17  
9 through 20, anyone there with close friends or family involved  
10 in the system in this way?

11 Yes. Let me start with Mr. Camenzind.

12 JUROR #18: A cousin.

13 THE COURT: And tell me what -- what he was charged  
14 with.

15 JUROR #18: He was charged with multiple DWIs.

16 THE COURT: Did he ultimately do time on that?

17 JUROR #18: He did. He received a 10-year sentence  
18 and served two, I believe, two or three.

19 THE COURT: All right. Do you have an opinion about  
20 how he was treated by the criminal justice system?

21 JUROR #18: I do. I think they were a bit lenient.

22 THE COURT: Okay. Does he have a serious alcohol  
23 problem in your opinion?

24 JUROR #18: He does.

25 THE COURT: Has he gotten treatment for it since he's

1     been out?

2                 JUROR #18: I believe he received treatment for it --  
3     and you can tell me if I'm wrong -- while he was in.

4                 THE COURT: Yeah, I mean that usually does happen in  
5     prison.

6                 JUROR #18: Yeah, and --

7                 THE COURT: Do you know at the current time whether  
8     he's sober or still having problems?

9                 JUROR #18: I do not believe he's sober.

10                THE COURT: Okay. Do you think there's anything  
11     about that situation that would affect your ability to serve  
12     fairly in this case?

13                JUROR #18: I don't think so.

14                THE COURT: Okay. And then somebody else there had  
15     their hand up. Okay. Mr. Calkins?

16                JUROR #19: Yes. My father. Probably 25 years ago.  
17     It was -- I wouldn't have an opinion about the court then.

18                THE COURT: Do you know what he was charged with?

19                JUROR #19: Some kind of a possession.

20                THE COURT: Some kind of a drug case?

21                JUROR #19: Yeah.

22                THE COURT: And do you know what the drug was?

23                JUROR #19: No, I don't.

24                THE COURT: Okay. And did -- did he go to jail?

25                JUROR #19: Yes.

1 THE COURT: How long was he in jail?

2 JUROR #19: Eight to 10 years.

3 THE COURT: Did you go visit him when he was in jail?

4 JUROR #19: Yes.

5 THE COURT: And how long has he been out then? Like  
6 15 years or --

7 JUROR #19: Umm, probably 10 to 12 years, 10 to 12 to  
8 15 years.

9 THE COURT: Okay. And you said -- well, let me ask  
10 you this. Do you know where he was prosecuted? Was it  
11 federal court, state court?

12 JUROR #19: I believe it was federal.

13 THE COURT: And was it here in the St. Louis area?

14 JUROR #19: No, ma'am.

15 THE COURT: Okay. It was in another state?

16 JUROR #19: Yes, ma'am.

17 THE COURT: Okay. Is there anything about that  
18 situation -- it sounds fairly serious. I mean that's a long  
19 sentence, and it's your father; it's a very close relative.  
20 Do you think that would affect your ability to decide this  
21 case fairly, which does involve an allegation of, you know, a  
22 drug conspiracy?

23 JUROR #19: No.

24 THE COURT: Okay. You think you can be fair?

25 JUROR #19: Yes.

1 THE COURT: All right. Thank you.

2 And, Ms. Burns, you had your hand up? Yes.

3 JUROR #20: Yes. My husband was charged probably 15  
4 or 20 years ago with a DUI and a concealed weapon, and he just  
5 received probation.

6 THE COURT: Okay. And so that was, you said, 15 or  
7 20 years ago?

8 JUROR #20: Yeah.

9 THE COURT: And has he had any trouble since?

10 JUROR #20: No.

11 THE COURT: Do you have any opinion about how he was  
12 treated by the criminal justice system?

13 JUROR #20: No. He was fairly treated.

14 THE COURT: Okay. All right. Thank you.

15 Now I want to take the people on this row here.  
16 Anyone there who has close friends or family involved in the  
17 criminal justice system?

18 All right. Let me see if I get this. Ms. -- is that  
19 Rice Hill?

20 JUROR #23: Uh-huh.

21 THE COURT: All right. Can you tell me who in your  
22 friends or family?

23 JUROR #23: Someone I'm not close to anymore but was  
24 about five years ago, a little over five years ago.

25 THE COURT: A friend?

1 JUROR #23: A boyfriend.

2 THE COURT: Okay.

3 JUROR #23: Multiple DUIs. Probation violation.

4 Went to prison.

5 THE COURT: Did you ever visit him in prison?

6 JUROR #23: No.

7 THE COURT: And I understand he's no longer your  
8 boyfriend?

9 JUROR #23: Correct.

10 THE COURT: And do you -- do you have an opinion  
11 about how he was treated by the criminal justice system?

12 JUROR #23: Very fairly.

13 THE COURT: All right. Thank you.

14 And Ms. Mitchell?

15 JUROR #24: I have a nephew-in-law that was in  
16 jail -- a gun charge, but I don't ever see him. I'm not close  
17 to him. I don't even know the true facts about it.

18 THE COURT: Right.

19 JUROR #24: I just know he was in jail.

20 THE COURT: And how long ago did that happen?

21 JUROR #24: Seven or eight years.

22 THE COURT: Did -- did -- do you know if he  
23 actually -- how much time he actually served? Was he -- if he  
24 was just arrested and spent a little time in jail or was  
25 sentenced to a longer time?

1 JUROR #24: I was told four years, but I cannot say  
2 that's a fact. I don't even think we're supposed to know.

3 THE COURT: Yeah. In some families, I understand  
4 that's -- that people don't go around talking about it at  
5 Christmas dinner.

6 JUROR #24: And I don't ever see him, so . . .

7 THE COURT: Yeah. Is -- is there -- do you have any  
8 opinion about how he was treated by the system?

9 JUROR #24: No. I wasn't even around at that time  
10 where he was.

11 THE COURT: Thank you.

12 And then Ms. -- is it Schieffer?

13 JUROR #25: Schieffer.

14 THE COURT: Can you tell me who in your family or  
15 friends you're talking about?

16 JUROR #25: I have a brother-in-law that had a DWI,  
17 several DWIs.

18 THE COURT: And do you have an opinion about how he  
19 was treated?

20 JUROR #25: Very fairly.

21 THE COURT: Did he actually do time in jail?

22 JUROR #25: He was on probation for several years  
23 after that. It's been two to three years ago, and then he did  
24 do DWI court in Warren County.

25 THE COURT: Okay. All right. Anyone else in that



1 row?

2 All right. Then the people on the back row over  
3 here, numbers 28 through 31, anyone there have friends or  
4 family involved in the criminal justice system?

5 Let's see. Yes, ma'am, Ms. -- is it Wesley Toney or  
6 Toney?

7 JUROR #31: Toney.

8 THE COURT: I'm sorry?

9 JUROR #31: Toney.

10 THE COURT: Toney. Okay. Ms. Toney, can you tell me  
11 who in your family or friends were involved in the criminal  
12 justice system?

13 JUROR #31: I have an uncle and a cousin.

14 THE COURT: And do you know what their crimes -- what  
15 charges they had?

16 JUROR #31: I believe my uncle's is for molestation  
17 of a minor. He's doing time for that in prison. I think he  
18 will serve up to 10 years.

19 THE COURT: Okay.

20 JUROR #31: And then I have a cousin, which was his  
21 son, who just got out about a year ago, and he did time for  
22 five years in prison.

23 THE COURT: And do you know what that charge was?

24 JUROR #31: Armed robbery and a bunch of other  
25 things.

1 THE COURT: Do these -- do these relatives live in  
2 this area?

3 JUROR #31: No. Missouri, though, but no.

4 THE COURT: But not here? Okay. So not in the  
5 St. Louis metro area?

6 JUROR #31: No.

7 THE COURT: Okay. Did you ever visit either one of  
8 them in jail?

9 JUROR #31: Huh-uh.

10 THE COURT: And that's a no? I have to hear it; the  
11 court reporter --

12 JUROR #31: No. I'm sorry.

13 THE COURT: That's okay. We have to take it down.

14 JUROR #31: No.

15 THE COURT: Okay. And then do you have an opinion  
16 about how he was treated by the criminal justice system?

17 JUROR #31: No, I don't have an opinion.

18 THE COURT: All right. All right. And then the next  
19 row of people, the last row, any of you all with friends or  
20 family involved in the criminal justice system?

21 All right. And let me just start with you,  
22 Mr. Pulley.

23 JUROR #32: This was my sister-in-law's sister. She  
24 was charged with murder. She was just sentenced to eight  
25 years.

1 THE COURT: Where did that happen?

2 JUROR #32: Kansas City area.

3 THE COURT: That's a fairly serious crime. And she  
4 was just recently sentenced?

5 JUROR #32: Yeah. It was a plea bargain. I think  
6 she was sentenced for manslaughter.

7 THE COURT: Do you know any of the circumstances  
8 surrounding that crime?

9 JUROR #32: Just that I think her and her boyfriend  
10 were out partying and when they got home he got shoved down a  
11 staircase.

12 THE COURT: Okay. It didn't involve a firearm to  
13 your knowledge?

14 JUROR #32: No.

15 THE COURT: All right. Do you have an opinion about  
16 how she was treated by the criminal justice system?

17 JUROR #32: Other than that they didn't get her off  
18 the street fast enough, no.

19 THE COURT: Is this somebody you didn't have the  
20 greatest relationship with even before this?

21 JUROR #32: My sister-in-law never had a great  
22 relationship with her.

23 THE COURT: Okay. Yeah. That's -- that's where --  
24 yeah, where it goes. Okay. All right. And did you have  
25 someone else to talk about?

1 JUROR #32: No.

2 THE COURT: Okay. Do you think that would affect  
3 your ability to serve fairly on this jury?

4 JUROR #32: No.

5 THE COURT: All right. Thank you.

6 And then Mr. Streicher?

7 JUROR #33: Streicher.

8 THE COURT: Streicher. Okay.

9 JUROR #33: German.

10 THE COURT: Got to remember that. And so tell me who  
11 in your friends and family.

12 JUROR #33: Daughter. DWI.

13 THE COURT: Your daughter?

14 JUROR #33: Yes.

15 THE COURT: And how long ago was that?

16 JUROR #33: Probably two, three years ago.

17 THE COURT: Did she actually serve time?

18 JUROR #33: No.

19 THE COURT: And is she doing okay now?

20 JUROR #33: Yep.

21 THE COURT: What's your opinion about how she was  
22 treated by the criminal --

23 JUROR #33: It was fair.

24 THE COURT: Okay. All right. And then, Mr. Baybo,  
25 did you have your hand up?

1 JUROR #34: Yes, ma'am.

2 THE COURT: And tell me who in your family.

3 JUROR #34: Friend and neighbor.

4 THE COURT: And what was that person charged with?

5 JUROR #34: A DWI.

6 THE COURT: And how long ago was that?

7 JUROR #34: I think maybe two years ago.

8 THE COURT: Did that person do time in jail or  
9 prison?

10 JUROR #34: She did a shock therapy, like three days.

11 THE COURT: Yeah. And do you have an opinion about  
12 how -- how she was treated by the criminal justice system?

13 JUROR #34: No, ma'am.

14 THE COURT: Okay. And then anyone else on that row?  
15 Yes, #26, did you have an answer?

16 JUROR #26: Yeah, I did want to interject. I did  
17 have a neighbor that was convicted of robbery, of bank  
18 robbery.

19 THE COURT: A bank robber?

20 JUROR #26: Yeah.

21 THE COURT: How long ago was his conviction?

22 JUROR #26: About ten years ago. I think he was  
23 sentenced to four years in Fulton.

24 THE COURT: And did you know him at that time?

25 JUROR #26: At that time, I did not. I had moved

1 away.

2 THE COURT: But you know him now?

3 JUROR #26: No, I don't. I haven't seen him since,  
4 but I mean we lived across the street from each other  
5 literally for 12 years.

6 THE COURT: And then after you moved away, you heard  
7 that this had happened?

8 JUROR #26: Yes, yes.

9 THE COURT: Okay. Do you have an opinion about how  
10 he was treated?

11 JUROR #26: I think he was treated fairly.

12 THE COURT: Yeah.

13 Is there anyone I missed? Yes, ma'am, #14.

14 JUROR #14: I know this sounds crazy, but I forgot my  
15 husband had a DUI.

16 THE COURT: Okay.

17 MR. JIMERSON: I'm sorry. I didn't hear that.

18 THE COURT: She said her husband had a DUI.

19 MR. JIMERSON: Okay.

20 THE COURT: And how long ago was that?

21 JUROR #14: Sixteen years.

22 THE COURT: And did he -- what happened? What was  
23 the result of that? Was it --

24 JUROR #14: His license was suspended and --

25 THE COURT: That was it?

1 JUROR #14: That was it.

2 THE COURT: And do you have an opinion about how he  
3 was treated?

4 JUROR #14: It was fair.

5 THE COURT: Okay. And then there was someone else.  
6 Yes, #1, Ms. Reinhardt.

7 JUROR #1: Yeah. My brother-in-law, I think, has two  
8 DUIs. I don't really know much about it. My uncle's a ward  
9 of the state. I guess he has been in and out of jail, but I  
10 don't really know him very well. And then my uncle-in-law I  
11 never knew, I guess, was gunned down on Christmas, and he was  
12 selling cocaine.

13 THE COURT: And that was this recent Christmas?

14 JUROR #1: No. I'd never actually met him.

15 THE COURT: Oh, okay.

16 JUROR #1: It was a really long time ago.

17 THE COURT: A long time ago, so it was something your  
18 husband told you about in his family?

19 JUROR #1: Yeah.

20 THE COURT: Yeah. When you said your uncle was a  
21 ward of the state, is it -- is he -- does he have some  
22 disability or --

23 JUROR #1: Yeah. I guess he just has a lot of mental  
24 issues. Bipolar. He was released and was able to, you know,  
25 obtain his own apartment for a while, and then I guess that

1 didn't go very well, and so he was, you know, taken back. He  
2 can't really take care of himself.

3 THE COURT: Right. And so he's got -- he's been  
4 through the criminal justice system as well?

5 JUROR #1: Yeah. I know in California and currently  
6 in Missouri.

7 THE COURT: All right. Thank you. Now, is there  
8 anything about those situations that would affect your ability  
9 to be fair?

10 JUROR #1: No.

11 THE COURT: And those of you -- I didn't ask  
12 everybody that question, and I meant to, so if I didn't ask  
13 you, is there anybody here who thinks their relative or  
14 friend's situation with the criminal justice system would make  
15 it hard for them to judge this case fairly?

16 Now, I just want to make sure because I'm not sure of  
17 how I asked it. Did -- is there anybody here who has close  
18 friends or relatives, if you haven't already told me about it,  
19 who are currently facing any charges?

20 All right. Thank you.

21 Now I want to ask about friends and family members  
22 who are in law enforcement, and in particular, I want to know,  
23 again, if you have close family, close friends, in particular,  
24 you know, if you grew up around a law enforcement family or  
25 have a lot of friends who are law enforcement officers, but



1 I'd also like to know generally just do you know people or  
2 consider people close friends or family who are involved in  
3 law enforcement, and I'm describing law enforcement very  
4 broadly, and that would include, obviously, you know, city and  
5 county and state police. It would also include anybody who  
6 works for a prison or works for a police department even if  
7 they're, like, a dispatcher or something. It would include  
8 anybody who was a prosecuting attorney. It would also include  
9 anybody who works for any of the federal law enforcement  
10 agencies. Now, you've heard reference to the Bureau of  
11 Alcohol, Tobacco and Firearms. They're involved in this case,  
12 but there are several other federal law enforcement  
13 agencies -- the Drug Enforcement Administration, the Secret  
14 Service, the FBI, the Postal Inspectors. There's a lot of  
15 different law enforcement people in various areas, and so if  
16 you know anybody who's involved in law enforcement as I've  
17 defined it very broadly and if they're somebody -- not just  
18 somebody you vaguely know but somebody you see or you know  
19 well or you're related to, I'd like to know about that.

20 So, again, the back row, friends and family members  
21 in law enforcement?

22 All right. And let me start with #1, Ms. Reinhardt.

23 JUROR #1: My uncle is a retired police officer. I  
24 believe he -- of Shrewsbury.

25 THE COURT: Okay.

1 JUROR #1: Or maybe it was Crestwood.

2 THE COURT: Okay. Thank you.

3 And #2, Ms. Blust, or is it Blust or Blust?

4 JUROR #2: Either way. It doesn't matter to me.

5 THE COURT: Okay.

6 JUROR #2: My cousin's an attorney. Her dad was in  
7 the AFOSI. I also have a cousin in the INS or Homeland  
8 Security. I think that's it.

9 THE COURT: AFOSI -- is that --

10 JUROR #2: Air Force Office of Special  
11 Investigations.

12 THE COURT: So he was an Air Force policeman?

13 JUROR #2: He's in Air Force Special Investigations.

14 THE COURT: Okay. Yeah. All right. And your cousin  
15 who's the attorney is -- what kind of practice does that  
16 person have?

17 JUROR #2: She mainly handles disability cases in  
18 Poplar Bluff.

19 THE COURT: Okay. All right. And then let's see.  
20 Who else had their hands up there? #4, Ms. Clayton.

21 JUROR #4: My boyfriend was a police officer in  
22 Byrnes Mill up to about three years ago.

23 THE COURT: I'm sorry. I can't hear you.

24 JUROR #4: My boyfriend was a police officer in  
25 Byrnes Mill up to about three years ago.

1 THE COURT: What does he do now?

2 JUROR #4: He works for a security company, but for  
3 the last four years, he was working in Michigan, so he was  
4 part-time.

5 THE COURT: Okay. And so he's worked in law  
6 enforcement off and on?

7 JUROR #4: Yes.

8 THE COURT: Okay. And -- all right. And then  
9 someone else on that row had their hand up? Yes, Ms. Boyer.

10 JUROR #6: I have a good friend that's a state  
11 patrolman, Troop C, and I have a nephew that works in the  
12 prison system.

13 THE COURT: Okay. Where does your nephew work?

14 JUROR #6: Bonne Terre.

15 THE COURT: All right. Now let me ask the next row  
16 of people, numbers 7 through 11. Yes, sir, Mr. Payne.

17 JUROR #7: I have a sister that's a deputy sheriff in  
18 St. Francois County, and I have an uncle and a cousin that's  
19 lawyers. One's in Madison County. One's here in St. Louis.

20 THE COURT: Do you know if either of the lawyers are  
21 involved in -- do criminal work, or do they do civil work?

22 JUROR #7: No. Just civil work.

23 THE COURT: Okay. All right. Thank you.

24 And others on that row? Yes, ma'am, Ms. Schneider.

25 JUROR #10: My niece -- her husband is a sergeant on

1 the SWAT team. I'm pretty sure it's South County.

2 THE COURT: All right. Thank you.

3 Others?

4 The front row then, numbers 12 through 16.

5 Number -- let's see; I'm sorry -- 13, Ms. -- is it  
6 Deichmann?

7 JUROR #13: Very good.

8 THE COURT: Okay.

9 JUROR #13: My nephew's fiancée is a Webster Groves  
10 police officer.

11 THE COURT: All right. Thank you.

12 And someone else had their hand up on that row.

13 Yes, ma'am, Ms. Dooley.

14 JUROR #14: My uncle is a retired St. Louis County  
15 police officer, and my college roommate married a St. Louis  
16 County police officer, but I haven't seen them in like 20  
17 years. We were close at the time.

18 THE COURT: You were close when she married him?

19 JUROR #14: Right.

20 THE COURT: Yeah. All right. Others on that row?

21 Yes, sir, #15, Mr. Hochecker.

22 JUROR #15: A friend of mine, officer of Manchester.  
23 He's a police detective.

24 THE COURT: He's a detective?

25 JUROR #15: Yeah.

1 THE COURT: All right. And Mr. Councilor?

2 JUROR #16: Yeah. I don't know if this is a close  
3 enough relative, but my dad's cousin married someone who  
4 retired from the ATF recently, and going back to what you were  
5 asking about earlier, my college roommate had multiple DWIs,  
6 and I was close to him at that time, and, you know, not  
7 somebody I'm in regular contact with now.

8 THE COURT: Yeah. So the college roommate, you're  
9 not in contact again?

10 JUROR #16: Right.

11 THE COURT: Okay. And the -- the person -- your  
12 dad's cousin married someone who was -- did that -- I'm trying  
13 to decide if what you were telling me was the retirement  
14 recently happened or the marriage recently happened or both.

15 JUROR #16: They've been married for 40 years.

16 THE COURT: Okay.

17 JUROR #16: Just recently retired.

18 THE COURT: But she just recently retired or he just  
19 recently retired?

20 JUROR #16: He just recently retired.

21 THE COURT: Okay. I'm having trouble here with  
22 pronouns. So -- and do you know what he did?

23 JUROR #16: He was pretty high up out in Washington,  
24 DC, towards the end. That's about all I know.

25 THE COURT: Can you tell me his name?

1 JUROR #16: Wally Nelson.

2 THE COURT: Wally Nelson?

3 JUROR #16: Yeah.

4 THE COURT: All right. The lawyers can figure out if  
5 this is someone that anybody knows or is involved with.

6 Assuming that person is not involved at all in this case, do  
7 you think that relationship or knowing that person -- it  
8 sounds a little bit attenuated -- would affect your ability to  
9 be fair in this case?

10 JUROR #16: No.

11 THE COURT: You could still give both the Defendant  
12 and the Government the same fair trial?

13 JUROR #16: Yes.

14 THE COURT: All right. Thank you.

15 All right. Then the next group of people over here,  
16 friends and family members with law enforcement family or  
17 friends?

18 Yes, #18.

19 JUROR #18: A friend. She's a prosecutor in  
20 St. Louis County.

21 THE COURT: And what is her name?

22 JUROR #18: Lorena von Kaenel.

23 THE COURT: All right. Thank you.

24 And the -- let's see. #19, let me take Mr. Calkins.

25 JUROR #19: I have a friend that's a St. Charles

1 County cop, I guess. Two other friends, they're both  
2 dispatch. I think one's O'Fallon and one's St. Charles  
3 County, and we have a friend who's a lawyer.

4 THE COURT: And does the lawyer -- what kind of law  
5 does the lawyer practice?

6 JUROR #19: I think it's mostly civil, traffic and  
7 stuff, DUIs.

8 THE COURT: And Ms. Burns?

9 JUROR #20: I have an -- I guess he's more of an  
10 acquaintance than a close friend. He's a police officer in  
11 Jefferson County, I believe. I think he does undercover work  
12 of some type.

13 THE COURT: All right. Thank you. And then on the  
14 front row here, numbers 21 through 27, anyone there with  
15 friends and family members in law enforcement?

16 Yes, Mr. Orban, #27.

17 JUROR #27: Yeah. We have a friend of the family  
18 that's a retired highway patrolman.

19 THE COURT: All right. And then the four people over  
20 or the numbers -- I can't find your numbers -- 28 through 31.

21 Yes, ma'am. That's Ms. Hayes?

22 JUROR #29: Yes. My dad was a police officer in  
23 Sedalia and Jeff City, Missouri.

24 THE COURT: Okay. Your dad was a police officer in  
25 Sedalia and Jeff City?

1 JUROR #29: Yes.

2 THE COURT: And is he retired now?

3 JUROR #29: Yes.

4 THE COURT: And let's see. Mr. Waltermann, did you  
5 have your hand up?

6 JUROR #30: No, ma'am.

7 THE COURT: Okay. Then somebody else? Ms. Toney,  
8 did you have your hand up?

9 JUROR #31: (Shakes head from side to side.)

10 THE COURT: Okay. All right. Then the last group of  
11 people, numbers 32 through 36. All right. So, Mr. Pulley,  
12 can you tell me who in your friends and family are involved in  
13 law enforcement or have been?

14 JUROR #32: Growing up, I had neighbors that were a  
15 county sheriff and a highway patrolman. They were good -- my  
16 family knew them well -- good friends with my parents. And  
17 then I know somebody that works -- a man who works in the  
18 forensics lab in St. Charles County.

19 THE COURT: All right. And then Mr. Streicher.

20 JUROR #33: Cousin, retired detective in Florissant.

21 THE COURT: All right. And then, Mr. Baybo, did you  
22 have your hand up?

23 JUROR #34: (Shakes head from side to side.)

24 THE COURT: All right. Anyone else there?

25 All right. Thank you. Ms. Masterson?



1 JUROR #35: Yes. We have quite a few friends who are  
2 St. Louis City police officers. Most of them retired. Most  
3 of them are homicide. One is now a federal investigator for  
4 the State of Illinois. One's a sheriff's deputy for the City.

5 THE COURT: All right. So you know a number of  
6 people?

7 JUROR #35: Yes.

8 THE COURT: All right. And I'm not sure if I asked  
9 you all this, but -- well, I know I didn't ask it in this way.  
10 The United States -- the lawyers here are Assistant United  
11 States Attorneys. The actual United States Attorney for the  
12 Eastern District of Missouri, this district, is a man named  
13 Richard Callahan. Does anyone know Mr. Callahan?

14 Does anyone know anybody who works for the U.S.  
15 Attorney's Office?

16 JUROR #14: (Raises hand.)

17 THE COURT: And you've told me who you know?

18 JUROR #14: Yes, Carol.

19 THE COURT: Carol. Well, she works for the court,  
20 not for the U.S. Attorney's Office, but that -- they are  
21 different. That's the -- does anybody else know anyone who  
22 works for this federal court in any capacity?

23 Do any of you all know each other? Sometimes people  
24 get to jury duty and they see somebody they haven't seen since  
25 high school, like you saw somebody working in the court you

1 hadn't seen. Yes, #28. I'm sorry. 35.

2 JUROR #35: 35. I don't know if you mean this  
3 particular federal court or in this building.

4 THE COURT: In the building.

5 JUROR #35: I'm acquainted with Judge Sherri Sullivan  
6 and Tom Mummert.

7 THE COURT: Oh, okay. And so, actually -- yeah, so  
8 Judge Mummert works here. He's out of town this week, I could  
9 tell you. Judge Sullivan works actually in the Missouri Court  
10 of Appeals.

11 JUROR #35: Okay.

12 THE COURT: But so you do -- you are acquainted with  
13 both of them?

14 JUROR #35: Acquainted, yes.

15 THE COURT: Anybody else know any other judges that  
16 you haven't already told us about? #1.

17 JUROR #1: Judge Ohmer.

18 THE COURT: Yeah, Judge Ohmer in St. Louis County.

19 JUROR #1: Uh-huh.

20 THE COURT: Okay. Anybody else know any other  
21 judges?

22 All right. So of all these relationships you've told  
23 me about, both with law enforcement officers, people in  
24 various aspects of the -- of the legal system where you know  
25 those people, is there anything about any of your

1 relationships that might make it difficult for you to judge  
2 this case fairly?

3 And a couple of you -- I guess, Ms. Masterson, maybe  
4 I'll pick on you since you have a lot of friends who are  
5 police officers and know some judges. When I -- part of what  
6 I'm trying to ask is, if you were to listen to the evidence in  
7 the case and based on the evidence and the law decide that  
8 this Defendant was not guilty and return that verdict and the  
9 other -- you know, that was the verdict in the case, when you  
10 next saw your friends who are all retired law enforcement  
11 officers and you tell them you were on jury duty and they ask  
12 you what happened, would you be embarrassed to tell them that  
13 you found someone not guilty?

14 JUROR #35: Not at all.

15 THE COURT: Would that make you hesitate in any way  
16 to act?

17 JUROR #35: No.

18 THE COURT: Thank you. So that's really what I'm  
19 asking all the rest of you more or less. I mean, is there any  
20 reason that those relationships would make it hard?

21 Okay. Thank you.

22 Your job in this case will be to determine what --  
23 well, here's how we say it, and Judge Sippel may have said  
24 something like this to you yesterday. There are two parts of  
25 a case. There's the facts and the law, and I'm the judge of

1 the law, and the jury is the judge of the facts. If you are  
2 selected to serve on the jury, it will be your job to listen  
3 to the evidence and then to decide what you believe happened  
4 in the case, and then I will give you instructions about the  
5 law. The ones you get at the end of the case will be in  
6 writing, and you'll take them with you to the jury room, and  
7 then it will be your job to decide whether -- based on the law  
8 that I give you and the evidence that you determined was --  
9 was what you believed happened in the case -- whether the  
10 Government has met its burden of proving the Defendant guilty  
11 beyond a reasonable doubt. Is there anybody who thinks that,  
12 "Well, I'm not sure" -- you know, well, let me back up. If  
13 you're the judge -- I'm the judge of the law, and you have to  
14 follow the law that I give you in my instructions. I will  
15 tell you what the law is. I assure you I don't make it up. I  
16 get it from the Congress of the United States and the Supreme  
17 Court of the United States, and -- but I will tell you what  
18 the law is, and then it will be your job to follow that. You  
19 know, you decide the facts, I decide the law, and so is there  
20 anybody who thinks that they could not follow my instructions  
21 on the law even if they disagreed with them? It's not usual  
22 for someone to disagree with the law, but sometimes you do,  
23 but your job as a juror is to follow the law even if you don't  
24 think it's right. Is there anybody who has any problem with  
25 that? And I have to tell you that's the same oath I take. I

1 take an oath to follow the law whether it would be a law I  
2 personally agreed with or not, and I have to do that, and  
3 that's what we're asking you of you as well. Anybody who has  
4 a problem with that? And there are some very legitimate  
5 disputes over it, and people do dispute them from time to  
6 time.

7 Now I want to ask you about -- because this case does  
8 involve allegations of a conspiracy to possess drugs -- and in  
9 particular, it's an allegation of conspiracy to possess  
10 cocaine -- I need to know about whether you all have any  
11 friends or relatives who have had serious problems with  
12 substance abuse and whether that would include cocaine or any  
13 other illegal substance or if it would include even alcohol  
14 because substance abuse is substance abuse, as we all now  
15 know. Anyone who has close friends or family who has had  
16 serious problems with substance abuse at the current time or  
17 in the past?

18 So let me take the first row, back row of people.  
19 Yes, #4.

20 JUROR #4: My ex-husband.

21 THE COURT: Your ex-husband. And what was his  
22 substance problem?

23 JUROR #4: Marijuana and alcohol that I know of.

24 THE COURT: And how long have you all been divorced?

25 JUROR #4: Let's see here. Ten years.

1 THE COURT: Ten years. Do you know how he's doing  
2 now?

3 JUROR #4: As far as I know, he doesn't use either  
4 one now.

5 THE COURT: You think he's clean and sober now?

6 JUROR #4: (Nods head up and down.)

7 THE COURT: Okay. Anyone else in that row?

8 The next row of people, numbers 7 through 11. Anyone  
9 there? All right. #8?

10 JUROR #8: I have a -- well, an ex-boyfriend who used  
11 marijuana and alcohol.

12 THE COURT: And do you know how he's doing now?

13 JUROR #8: No.

14 THE COURT: You don't know one way or another?

15 JUROR #8: No.

16 THE COURT: Okay. And --

17 JUROR #8: And another good friend who had alcohol.

18 THE COURT: And you said "had"; does that mean that  
19 person's sober?

20 JUROR #8: He's doing very well.

21 THE COURT: He's doing well and sober now?

22 JUROR #8: (Nods head up and down.)

23 THE COURT: All right. And, Ms. Roberts, did you  
24 have your hand up?

25 JUROR #9: Yeah. I have an aunt. Crack cocaine.

1 She's now 10 years sober.

2 THE COURT: That's great.

3 JUROR #9: And an uncle that OD'd on heroin.

4 THE COURT: How long ago did he OD on heroin?

5 JUROR #9: About three years.

6 THE COURT: That's, obviously, a really serious issue  
7 to have someone die from using drugs. Do you think that would  
8 make it hard for you to decide this case fairly?

9 JUROR #9: No.

10 THE COURT: All right. Thank you. And Ms. -- let's  
11 see. Yeah, Ms. Dohack?

12 JUROR #11: Yes. My brother, about eight years ago,  
13 was addicted to pain pills and marijuana, but he's clean now.

14 THE COURT: He's clean now?

15 JUROR #11: (Nods head up and down.)

16 THE COURT: Okay. All right. The next group of  
17 people, numbers -- I'm sorry -- 12 through 16.

18 Yes, Ms. Prince.

19 JUROR #12: I have alcoholism in my family.

20 THE COURT: Your -- yeah, I mean, and that's true;  
21 often it is in the whole families.

22 JUROR #12: Yeah. My dad.

23 THE COURT: Are the people in your family who have  
24 struggled with this doing okay now or still struggling?

25 JUROR #12: My dad passed away six years ago from it.

1 THE COURT: Okay. And alcohol was a factor?

2 JUROR #12: I mean it led up to it. He had cirrhosis  
3 and stuff, so it contributed to it.

4 THE COURT: Well, I can sympathize with that. My own  
5 father had that as well, and that's -- he -- he actually  
6 didn't die of cirrhosis. He got clean 10 years before he died  
7 and died of something else, so that was nice he had 10 years,  
8 but I do understand it. And so other people have struggled as  
9 well?

10 JUROR #12: Uh-huh.

11 THE COURT: All right. Thank you.

12 THE COURT: Others in that row? Yes, #14.

13 JUROR #14: Also a lot of alcoholism in the family.  
14 Large Irish family.

15 THE COURT: You know, I was going to make that  
16 stereotypical remark and thought better of it, but since you  
17 did, that's -- you know, it's a stereotype, but it doesn't  
18 mean it's always true.

19 JUROR #14: But it's true.

20 THE COURT: So are people in your -- do you still  
21 have people in your family who are still struggling actively  
22 or still drinking too much actively?

23 JUROR #14: Oh, yeah.

24 THE COURT: Okay. Is there anything --

25 JUROR #14: I'm not real close with them, but I -- I



1 mean it's a huge family.

2 THE COURT: Right.

3 JUROR #14: So, yeah.

4 THE COURT: Okay. Thank you.

5 Others on that row had their hand up.

6 Yes, Mr. Councilor.

7 JUROR #16: My grandfather, apparently, was an  
8 alcoholic. We didn't have much contact with him, though,  
9 so --

10 THE COURT: You haven't had -- you never had contact  
11 with him?

12 JUROR #16: Only a few times when he was alive.

13 THE COURT: Okay. Thank you.

14 And numbers 17 through 20? #18, Mr. Camenzind.

15 JUROR #18: A brother -- cocaine and meth.

16 THE COURT: Cocaine and meth?

17 JUROR #18: Yes.

18 THE COURT: And how's he doing now?

19 JUROR #18: Not well.

20 THE COURT: Has he gotten any treatment?

21 JUROR #18: He's been through treatment many times.

22 THE COURT: Thank you.

23 JUROR #18: You're welcome.

24 THE COURT: And I think -- Mr. Calkins, did you have  
25 your hand up?

1 JUROR #19: I did not, but my brother-in-law did at  
2 one point have some issues with -- I think it was some form of  
3 cocaine, and he's good now.

4 THE COURT: He's doing okay now?

5 JUROR #19: (Nods head up and down.)

6 THE COURT: Thank you.

7 And, Ms. Burns, did you have your hand up?

8 JUROR #20: Yes. Well, my husband, he's clean now.  
9 He hasn't had anything to drink in probably 15 years. I had  
10 two brothers that struggled with alcohol. My oldest brother  
11 is deceased now. My other brother is much better. And I have  
12 a nephew, my brother's son, who struggles with alcohol and  
13 drugs, and I really don't know. He's kind of back and forth.  
14 I don't know how he's doing right now.

15 THE COURT: Do you know what drugs he uses besides  
16 alcohol?

17 JUROR #20: I really don't.

18 THE COURT: Okay. Thank you.

19 All right. Now, the next group of people, numbers 21  
20 through 27. Let's see. Yes, Ms. Rice Hill. No. Yeah,  
21 Ms. Rice Hill.

22 JUROR #23: Uh-huh. The person I spoke of earlier  
23 with the DUI charges is an alcoholic.

24 THE COURT: Right. And I think you said -- well, do  
25 you still -- do you know how he's doing now?

1 JUROR #23: No idea.

2 THE COURT: Okay. And let's see. Others had their  
3 hands up there. Yes, Ms. Schieffer -- Schieffer. I said it  
4 right the first time, wrong the second time.

5 JUROR #25: My brother-in-law with a DWI charge. And  
6 then I have a biological grandfather I never met that died  
7 from alcoholism.

8 THE COURT: All right. Others in that row?

9 Yes, Mr. Orban.

10 JUROR #27: Yeah. My great grandfather was an  
11 alcoholic. Also, my grandmother's boyfriend is an alcoholic.

12 THE COURT: Currently?

13 JUROR #27: Yes.

14 THE COURT: All right. Then the next row of people,  
15 numbers 28 through 31.

16 JUROR #28: My mother is an alcoholic, has been for  
17 years.

18 THE COURT: And has she gotten treatment?

19 JUROR #28: No. Resists all treatment.

20 THE COURT: Resists treatment, yeah. Well, you have  
21 my sympathy also.

22 All right. And, Ms. Hayes, did you have your hand  
23 up?

24 JUROR #29: Yes. My husband's cousin has been on and  
25 off meth for the past 10 years.

1 THE COURT: All right. Thank you.

2 And others in that row?

3 And then the last row of people, friends and family  
4 members with substance abuse problems?

5 All right. So Mr. Pulley?

6 JUROR #32: My cousin and my father-in-law. Both  
7 alcoholics. Both contributed to their deaths.

8 THE COURT: Okay.

9 JUROR #32: And my wife's from a large Irish family  
10 also, so --

11 THE COURT: Yeah, so other people who have issues.  
12 Mr. Streicher?

13 JUROR #33: My youngest son had a bout with cocaine.

14 THE COURT: And how long ago was that?

15 JUROR #33: It's been probably around six or eight  
16 years ago.

17 THE COURT: And is he doing okay now?

18 JUROR #33: Yes, he's doing great. I will tell you I  
19 have a major issue with drug use.

20 THE COURT: Yeah. And tell me about that.

21 JUROR #33: I just -- you know, you've got three  
22 kids, and you try to raise them right, and he got mixed up  
23 with a girlfriend who brought it into his life, and I have a  
24 major -- I have a major issue with it.

25 THE COURT: Okay. I'm going to ask you some more

1 questions about that in a minute.

2 And others on that row who had their hand up?

3 Mr. Baybo?

4 JUROR #34: Grandfather and mother.

5 THE COURT: And was that alcohol?

6 JUROR #34: Yes, ma'am.

7 THE COURT: And have -- if they're still living, have  
8 they gotten treatment or are they doing okay now?

9 JUROR #34: Grandfather has since passed of cancer,  
10 and Mom has not decided she needs any help.

11 THE COURT: Okay. Well, good luck.

12 And was there someone else there? Yes, Ms. Hayden.

13 JUROR #36: My grandfather was an alcoholic.

14 THE COURT: You know, when I was growing up, I used  
15 to think it was a generation-skipping disease because if you  
16 grew up with it, then the next -- you know, but it just runs  
17 in families, I know for sure.

18 So let me ask all of you, and I just want to -- and  
19 setting aside Mr. Streicher, who I'm going to call up here to  
20 talk about, this case does involve a conspiracy to possess  
21 cocaine, and you'll hear more about it later. Is there anyone  
22 who because of their family member's substance issues thinks  
23 that it would be very difficult for them to judge this case  
24 fairly? Sometimes people do have reactions that because  
25 they've had family problems or issues they have a -- find it a

1 very hard time listening to anything about drugs or dealing  
2 with a case like this. Anybody who thinks they would?

3 Mr. Streicher, I'll ask you to come up to sidebar,  
4 please.

5 (A bench conference with Juror #33 was held on the record  
6 and outside of the hearing of the jury panel as follows:)

7 THE COURT: This is the microphone, which is why I'm  
8 holding it here --

9 JUROR #33: Okay.

10 THE COURT: -- so the court reporter can hear you.  
11 So tell me -- I mean you sounded like -- you said you had very  
12 strong feelings about drugs.

13 JUROR #33: I have never myself messed with drugs. I  
14 have three kids. You try to teach them the right thing. She  
15 came into his life, almost killed him, and I have a very  
16 strong passion against drugs right now.

17 THE COURT: And so how did he get cleaned up?

18 JUROR #33: The last time he went to the hospital  
19 when we were there. She took him because he about died in his  
20 bedroom downstairs. So we didn't even know what was going on.  
21 We had an idea. His mother didn't want to listen to it, but I  
22 had an idea, and after the last time -- she took him like  
23 three times. We only knew about the last time, and that was  
24 when he woke up because I intervened.

25 THE COURT: Right. And was this -- did you say this

1 was cocaine?

2 JUROR #33: Yes.

3 THE COURT: It was cocaine?

4 JUROR #33: Uh-huh.

5 THE COURT: And this case does involve cocaine, and I  
6 guess what I'm asking you is -- you sound pretty emotional  
7 about it. Are you telling us that you don't believe you could  
8 fairly give the Defendant the presumption of innocence?

9 JUROR #33: I'm shaking.

10 THE COURT: You are shaking, yeah.

11 JUROR #33: I just -- it's --

12 THE COURT: I mean this is --

13 JUROR #33: It was a very bad time.

14 THE COURT: Yeah.

15 JUROR #33: And I'm upset.

16 THE COURT: Look, it's completely legitimate, and  
17 there are -- does anybody have any objections if I --

18 MR. JIMERSON: No, Your Honor.

19 THE COURT: -- this juror? Okay. You're not going  
20 to have to serve on this case. I have had other people tell  
21 me similar stories, and it's very understandable. However,  
22 what I would like you to do is sit through the rest of the  
23 voir dire. You don't need to answer any more questions.

24 JUROR #33: Not a problem.

25 THE COURT: But I don't want you to tell everybody

1 you're off the jury --

2 JUROR #33: No. That's fine.

3 THE COURT: -- so I don't want -- you know, because I  
4 don't want to have a flock of people coming up with problems.  
5 Yours is obviously very genuine, and I'm sympathetic, and I'm  
6 glad your son is doing well.

7 JUROR #33: Yeah, he's doing great.

8 THE COURT: But you will not be required to serve.

9 JUROR #33: Thank you.

10 THE COURT: Okay. Thank you.

11 MR. JIMERSON: Thank you, sir.

12 JUROR #33: Thank you.

13 (The following proceedings were held within the hearing  
14 of the jury panel.)

15 THE COURT: Oh, I knew there -- I'm sitting here  
16 trying to remember what next I'm supposed to ask you about.  
17 Guns. This -- oh, yes, ma'am.

18 JUROR #2: I forgot. My uncle has a felony charge.

19 THE COURT: Has a felony charge?

20 JUROR #2: He was an alcoholic.

21 THE COURT: And what was his charge? Was it felony  
22 DWI?

23 JUROR #2: It was something to do with a firearm and  
24 a house burning down.

25 THE COURT: And do you know what happened as a result



1 of that?

2 JUROR #2: No. I know he lost his teaching license  
3 over it.

4 THE COURT: Do you know if he went to jail?

5 JUROR #2: No, I don't know.

6 THE COURT: Okay. Thank you.

7 All right. I want to -- this case does -- there are  
8 two firearms charges in this case. One of them is the -- a  
9 charge alleging that the Defendant was a felon, a previously  
10 convicted felon, in possession of a firearm, which is a  
11 federal crime, and the other one alleging that the Defendant  
12 possessed a firearm in connection with a drug trafficking  
13 offense, and it's -- the drug trafficking offense is the  
14 cocaine conspiracy that he's charged with. So they're all  
15 related. You know, it's one set of incidents, but there are  
16 two gun charges.

17 There are many people, including right now,  
18 apparently, some people in the Missouri legislature, who do  
19 not believe that these gun laws should be enforced by the  
20 federal government, and they think that it's just a wrong law,  
21 and that's a perfectly legitimate political belief, but if  
22 someone feels that way, we need to know about it because that  
23 might affect whether you could serve on this jury and do  
24 the -- you know, follow the law. So let me just ask; is there  
25 anyone here who feels that the federal gun laws that will be

1 involved in this case should not be enforced in the state of  
2 Missouri?

3 All right. I see no hands.

4 Is there anyone who believes that there should --  
5 well, you've sort of answered it because this is a more  
6 general question, but some people do think there shouldn't be  
7 any regulations whatsoever on who can possess or use a  
8 firearm. Is there anyone who believes that?

9 All right. And then people always ask me to ask you  
10 this question, so I'm going to. How many of you all are  
11 members of the NRA?

12 JUROR #7: (Raises hand.)

13 THE COURT: You know, if I ask this question when I'm  
14 sitting in Cape Girardeau, it's half the jury, and so how  
15 long -- so, Mr. Payne -- so I really do think it has something  
16 to do with where you live often, but, Mr. Payne, how long have  
17 you been a member of the NRA?

18 JUROR #7: Five years.

19 THE COURT: Okay. Even though you're a member of the  
20 NRA, do you have any problem with these federal laws that I've  
21 just discussed, the two involved in this case?

22 JUROR #7: No.

23 THE COURT: Okay. I think that's -- I think that's  
24 probably all I need. I guess I'll ask this question as well.  
25 How many people on the jury have guns in their -- firearms in

1 their homes?

2 (Show of hands.)

3 THE COURT: Okay. Quite a few. Let me -- let me go  
4 ahead and keep track, and I just want to -- let's see. And,  
5 Mr. Payne, I think you had your hand up, and others here in  
6 the box with their hands up, numbers 15 and 16. Thank you.  
7 And then over on this side, numbers 19 and 20. And then on  
8 this side, numbers 24, 26, 27. And the back row, 34, 35, and  
9 36. All right. Thank you.

10 Yeah, yeah, hold on a second. Yeah. So on the  
11 front, in this group, I believe -- and just tell me if I'm  
12 wrong and listen to this and if I missed you, please let me  
13 know. The people in this group that I had were numbers 2, 4,  
14 6, 7, 15, and 16. Anybody else in this group that has  
15 firearms in their homes?

16 Okay. Let me ask, start with you, Ms. Blust, and  
17 just ask, do you have your firearms for protection or for  
18 sport or for hunting or for some other reason?

19 JUROR #2: Hunting.

20 THE COURT: Hunting. Okay. And, Ms. Clayton, what's  
21 your reasons?

22 JUROR #4: They're not mine. They're my boyfriend's,  
23 so it's both or all three.

24 THE COURT: All three?

25 JUROR #4: (Nods head up and down.)

1 THE COURT: Okay. And Ms. Boyer?

2 JUROR #6: Hunting and for protection.

3 THE COURT: All right. And then Mr. Payne?

4 JUROR #7: The same.

5 THE COURT: The same? And sporting, hunting? I'm  
6 sorry?

7 JUROR #7: Sporting, hunting, protection, all of  
8 them.

9 THE COURT: I guess sporting and hunting are the same  
10 thing, aren't they?

11 JUROR #7: Yes.

12 THE COURT: But, yeah. Okay. Thank you. Well,  
13 actually, I know some people who target shoot that don't  
14 actually hunt animals, so that's -- yeah.

15 JUROR #7: Yeah.

16 THE COURT: And, yes, #11, Ms. Dohack?

17 JUROR #11: Yes. We also -- I live with my dad, and  
18 he has a gun for hunting.

19 THE COURT: Yeah. Thank you. And the front row  
20 then, #15.

21 JUROR #15: My father-in-law had me hold it for him  
22 and he passed away.

23 THE COURT: Yeah. So you're keeping his gun?

24 JUROR #15: (Nods head up and down.)

25 THE COURT: Yeah. And Mr. Councilor?

1 JUROR #16: Primarily hunting and sport shooting.

2 THE COURT: Yeah. You know, Mr. Hochecker, you're --  
3 there are -- I know -- I know other people who have heirloom  
4 guns or guns that were in the family, whether they're ancient  
5 or not. It's -- yeah, so, Mr. Calkins, why do you have  
6 firearms?

7 JUROR #19: Protection.

8 THE COURT: Okay. And Ms. Burns?

9 JUROR #20: Hunting and protection, and they're  
10 actually my husband's guns, and he's also a member of the NRA.  
11 I'm not.

12 THE COURT: Okay. All right. Thank you. And then  
13 Ms. Mitchell?

14 JUROR #24: Hunting and protection, but I don't know  
15 how to use it, so it's not going to protect me.

16 THE COURT: Somebody in your home. I mean it's  
17 really why does someone in your home have them because I  
18 realize it might not be you personally. And Mr. Beavers?

19 JUROR #26: Yeah, hunting and protection.

20 THE COURT: Yeah. And Mr. Orban?

21 JUROR #27: My mother has a pistol used for  
22 protection and just like target shooting, and we also have  
23 rifles that were my great grandfather's that are just pretty  
24 much decoration that he used for hunting.

25 THE COURT: All right. Thank you.

1 And then let's see. Mr. Baybo?

2 JUROR #34: Protection.

3 THE COURT: And Ms. Masterson?

4 JUROR #35: Ours are more the heirloom, old hunting  
5 guns. No one hunts anymore, but we still have my  
6 father-in-law's guns.

7 THE COURT: And Ms. Hayden?

8 JUROR #36: Hunting.

9 THE COURT: Okay. Thank you.

10 #39. Oh, yeah, I missed -- I missed two of you,  
11 didn't I? I apologize. Hold on a second. It's not 39.  
12 It's -- let's see -- #29. Thank you. And that's -- let me  
13 just find you on the list. That's Ms. Hayes. Yes, ma'am.

14 JUROR #29: Hunting.

15 THE COURT: Okay. So you all have a firearm for  
16 hunting?

17 JUROR #29: Yes, ma'am.

18 THE COURT: Okay. Anyone else that I haven't asked?

19 All right. Thank you.

20 Yes, #32.

21 JUROR #32: I'm not sure this is relevant. My  
22 parents owned a store, and we sold rifles, shotguns,  
23 ammunition.

24 THE COURT: Did you work there in the past?

25 JUROR #32: Yes, as a teenager.

1 THE COURT: And your parents don't own the store  
2 anymore?

3 JUROR #32: No. They're retired.

4 THE COURT: Okay. Where was the firearms store?

5 JUROR #32: King City, Missouri. That's up by  
6 St. Joseph.

7 THE COURT: Okay. Thank you. And so is there -- I  
8 asked that question because often the lawyers ask me to ask  
9 it, although they didn't in particular in this case, but is  
10 there anybody who for any reason, because you own firearms or  
11 have them in your home, think that would make it hard to  
12 decide this case?

13 All right. Thank you.

14 #27 -- I'm sorry -- you had something to add.

15 JUROR #27: Yeah. I wasn't quite sure if this was  
16 relevant, but occasionally, I stay over at my girlfriend's  
17 house. Her family has firearms used for sporting and  
18 protection.

19 THE COURT: All right. Thank you.

20 Yes, #30. Thank you.

21 JUROR #30: Yes. Your Honor, I'm not sure of the  
22 relevance of this, but I work in an emergency department, and  
23 I take care of patients who are shot every day.

24 THE COURT: Right. And tell me what you do in the  
25 emergency -- so you're at Barnes, which is --

1 JUROR #30: Yes.

2 THE COURT: -- is where a lot of people with gunshots  
3 go, I think.

4 JUROR #30: Uh-huh. I'm a technician in the ED  
5 there.

6 THE COURT: What does a technician do?

7 JUROR #30: All the dirty work.

8 THE COURT: Yeah. Whatever they tell you to do,  
9 right, or all the things, and what shift do you work?

10 JUROR #30: I work nights.

11 THE COURT: And so you've had a lot of experience  
12 dealing with gunshots?

13 JUROR #30: Yes.

14 THE COURT: Yeah. There's not -- this case, as far  
15 as I know, does not involve any actual firing of firearms, I  
16 don't believe, but do you believe that your work with victims  
17 of gun violence would make it difficult for you to decide this  
18 case fairly?

19 JUROR #30: Honestly, I don't know.

20 THE COURT: Okay. Why don't you come up to the  
21 bench, and we'll ask you some more questions about that.

22 (A bench conference with Juror #30 was held on the record  
23 and outside of the hearing of the jury panel as follows:)

24 THE COURT: I haven't asked them about being a victim  
25 of a crime, have I?



1 MR. STEVENS: No. I was going to ask you to do that,  
2 Judge.

3 THE COURT: Yeah. No. I don't know what I'm  
4 thinking. That one usually takes a long time. Sorry about  
5 that.

6 MR. STEVENS: No. That's okay.

7 THE COURT: So -- so how long have you been in this  
8 line of work?

9 JUROR #30: About seven years.

10 THE COURT: And where did you work before, before  
11 Barnes?

12 JUROR #30: I worked at St. Mary's ED.

13 THE COURT: And so tell me what you feel about this.  
14 How does -- you deal with people who have been shot?

15 JUROR #30: Yeah. I mean I take care of patients all  
16 the time who are brought in who are overdosed. I mean just  
17 the other day I had somebody who was brought in and he had  
18 literally thrown out on the floor because he had OD'd on  
19 drugs, so I mean I guess I could have a biased opinion.

20 THE COURT: Hold on. She's having trouble. This is  
21 the microphone.

22 JUROR #30: Oh, okay. I guess I could have a biased  
23 opinion on it because, like I said, I see it literally every  
24 day.

25 THE COURT: Okay. Do you all wish to ask him

1 questions?

2 MR. STEVENS: Yeah, if I could. Now, you understand,  
3 obviously, there are drug and firearms charges in this case,  
4 as the Judge has explained, but there's no reason to think,  
5 obviously, this Defendant has anything to do with any patient  
6 you've seen.

7 JUROR #30: Sure.

8 MR. STEVENS: Do you understand that?

9 JUROR #30: Yes.

10 MR. STEVENS: Do you think you could set it aside and  
11 be fair to this Defendant in this case --

12 JUROR #30: I could, yeah.

13 MR. STEVENS: -- given the charges?

14 JUROR #30: Yes.

15 MR. STEVENS: If the Judge instructs you, can you  
16 follow the Judge's instructions in this case?

17 JUROR #30: Yes.

18 MR. STEVENS: Okay. You're sure about that?

19 JUROR #30: Yes.

20 MR. STEVENS: All right.

21 MR. JIMERSON: If I may? Sir, you might hear some  
22 evidence regarding cocaine, okay, and would that subject you  
23 to start thinking about your patients and the things -- and  
24 the things that they're going through?

25 JUROR #30: I mean I would associate it with my

1 patients, but I don't -- I think I could separate it from  
2 that.

3 MR. JIMERSON: What I'm trying to get at is that, you  
4 know, we don't ask you to set aside all your feelings because  
5 you can't do that as a human being, okay, but the question is  
6 whether or not that -- you know, we don't want you bringing in  
7 things outside the court that's just going to really persuade  
8 you one way or another other than what the Judge tells you,  
9 and, you know, so my question to you is, thinking about it,  
10 can you do that?

11 JUROR #30: I can sure try. I mean like I literally  
12 see it every day, and I've done it for years. So I mean, you  
13 know, you go to work, you work 12 hours a night, and you take  
14 care of people all the time, so it's -- I have dreams of  
15 people. It's weird, so I mean --

16 THE COURT: Yeah, well, and the real issue is whether  
17 that would affect your -- I mean that's who you are.

18 JUROR #30: I mean I don't know. I mean this is what  
19 I've done for years, so I guess I wouldn't know until I had  
20 the evidence and knew what was going on, if it would affect me  
21 at all.

22 MR. STEVENS: So as you stand here now, you can't be  
23 sure whether you can be fair to the Defendant -- is that what  
24 you're saying -- or whether you could follow the Judge's  
25 instructions?

1 JUROR #30: I mean if the Judge told me to do  
2 something, I would do it, yes, but I mean I still have my  
3 opinion.

4 MR. STEVENS: All right. Okay. Thank you.

5 THE COURT: All right. Thank you very much.

6 JUROR #30: You're welcome.

7 (Juror #30 leaves bench conference.)

8 MR. JIMERSON: Your Honor, how do you want to handle  
9 strikes if this would be one that --

10 THE COURT: Oh, yeah, we do them all at the end.

11 MR. JIMERSON: Okay.

12 THE COURT: And so what -- don't make any strikes or  
13 say anything about, you know, whether you like them or don't  
14 in front of the jury.

15 MR. JIMERSON: Okay.

16 THE COURT: What we do is we ask all the questions,  
17 and then we send them out, and then I ask initially for -- you  
18 know, immediately, I'll ask you, both sides, for any  
19 challenges for cause.

20 MR. JIMERSON: Okay.

21 THE COURT: And then we'll rule on those, and then  
22 we'll discuss any hardship and I'll deal with those.

23 MR. JIMERSON: Yes, ma'am.

24 THE COURT: And then you'll know who your pool is  
25 left and that's who you'll have to select.

1 MR. JIMERSON: I guess I was asking about this  
2 gentleman here; do you want me --

3 THE COURT: Yeah.

4 MR. JIMERSON: When you call them up --

5 THE COURT: Why don't you wait --

6 MR. JIMERSON: We'll wait.

7 THE COURT: -- and let's -- let's see where we are.

8 MR. JIMERSON: Yes, ma'am.

9 THE COURT: Okay.

10 MR. JIMERSON: Yes, ma'am.

11 MS. BEHRENS: Judge, I'm sorry. You mentioned, I  
12 think, to Cris about the victim.

13 THE COURT: Yeah.

14 MS. BEHRENS: But were you also going to ask just the  
15 general follow-up of any prejudices or anything that we  
16 haven't already talked about? Sometimes --

17 THE COURT: Oh, yeah.

18 MS. BEHRENS: Do you want to do that?

19 THE COURT: Yeah.

20 MS. BEHRENS: Because the last one you said, "I think  
21 this is my last question," so I just wanted to --

22 THE COURT: I said it was my last area, and it  
23 wasn't, yeah, and so yeah.

24 MR. STEVENS: Will you ask for hardships also, Judge?

25 THE COURT: I'll do that.

1 MR. STEVENS: Okay. Thank you.

2 THE COURT: I try to do that at the very end.

3 MR. STEVENS: All right. Thank you.

4 (The following proceedings were held within the hearing  
5 of the jury panel.)

6 THE COURT: So the lawyers have reminded me that if a  
7 lawyer or a judge ever says, "This is my last question," don't  
8 believe it, and so here's -- I do have a couple of other areas  
9 that I had forgotten about that I need to go over with you,  
10 and then the lawyers will ask some questions, so I'm going  
11 to -- we're going to take a short recess at this time, and  
12 what I would like is for you all to reassemble in the hallway  
13 in 15 minutes. If you want to go back downstairs, that's  
14 fine. There are restrooms on the hall here. Just be back up  
15 here at 11:00, and then we'll -- we'll proceed, and like I  
16 say, wait in the hallway. You will be sitting in the same  
17 chairs, so if you want to leave your coats and things, that's  
18 fine. I'd take your purses, but, you know, your -- feel --  
19 you can leave other things here if you want to. So at this  
20 time -- and please don't come back in the courtroom at all  
21 until we call for you out in the hallway. So the jury is  
22 excused for 15 minutes. Oh, and please remember what I said  
23 before. Don't talk about this case or this process at all.

24 (The following proceedings were held outside the hearing  
25 and presence of the jury panel.)

1           THE COURT: All right. Counsel, I just wanted to  
2 mention something to you about the jury list because sometimes  
3 it is a little hard to interpret. When you look at that  
4 column that says "Employer/Prior Employer/Spouse Employer",  
5 the first two lines apply to the juror, and that would be --  
6 the first line would be their current employment, and the next  
7 line, if there is one there, their spouse's employment -- I  
8 mean their prior employment. The third and fourth lines if  
9 they're listed or the third line is the spouse's employment.  
10 So like if you look at number -- I'll just take one that's got  
11 three. I don't think anybody's got four. Look at #7. His  
12 first two -- on #7, it shows Beco Concrete Production. That  
13 would be where he works now and how long. Pepsi America is  
14 where he worked previously for five years. And then the next  
15 line, that Parkland Health Center, that's his wife or his  
16 spouse. That's usually what it means, anyway. So I just  
17 wanted to let you know, and I do see there are some people who  
18 don't have any employment listed, and so I may ask them about  
19 that. If I don't, certainly, you're free to do that, and I'll  
20 try to remember.

21           So when they come back, I will ask them about being a  
22 victim of a crime, I'll talk about hardship, and I'll ask  
23 the -- I'll ask the catchall question as well as the question  
24 about whether they have a religious or moral difficulty  
25 sitting in judgment that would interfere with their ability to

1 be a juror. Okay?

2 MR. JIMERSON: Can we adjust that question, Your  
3 Honor?

4 THE COURT: Yeah.

5 MR. JIMERSON: Particularly -- I don't know; Cris  
6 want to hear this?

7 THE COURT: Yeah, go ahead. He's here. He can  
8 listen if he wants.

9 MR. JIMERSON: The issue about sitting in judgment,  
10 Judge, Your Honor, I -- I -- I believe that it probably states  
11 a jury's function, and I think the problem --

12 THE COURT: Here's the way I ask the question, and  
13 then you tell me if you have any objection. I always use too  
14 many words, but I say to the jurors there are many people who  
15 have deeply held religious or moral views that they should not  
16 sit in judgment of another human being. Some people who have  
17 that view believe that means they can't be a juror. Other  
18 people who have that view think that doesn't interfere with  
19 their role as a juror because all you're doing as a juror is  
20 deciding whether the Government has proved its case beyond a  
21 reasonable doubt. So if you're in the category where you have  
22 that belief but you don't believe it interferes with your  
23 ability to serve as a juror, that's fine. If you're in the  
24 group that -- and I don't usually say it exactly this way, but  
25 I do that preface, okay, and then I say if you're somebody who



1 has that belief and believes it would keep you from serving as  
2 a juror, please let me know.

3 MR. JIMERSON: Yes, ma'am.

4 THE COURT: So is that okay?

5 MR. JIMERSON: That's fine.

6 THE COURT: Yeah, because I agree because there are  
7 people -- if you start asking them -- you know, if you try to  
8 get everybody to agree that they shouldn't sit in judgment on  
9 another human being, you know, a whole bunch of people will  
10 agree to that, but they don't necessarily mean that they  
11 couldn't be a juror. They're -- you know, they're not --

12 MR. JIMERSON: Yes, ma'am.

13 THE COURT: You know, they're deciding whether the  
14 Government's met its burden of proof. Okay. That's what  
15 we'll do.

16 MR. JIMERSON: Thank you, Your Honor.

17 THE COURT: Yep. Thanks. Fifteen minutes or -- 15  
18 minutes from now. It will take them that long. You know, it  
19 won't really be exactly when the jury comes back.

20 (Court recessed from 10:48 a.m. until 11:07 a.m.)

21 (The following proceedings were held within the hearing  
22 and presence of the jury panel.)

23 THE COURT: All right. Thank you, all. And there  
24 are some areas I had neglected to ask you about earlier. The  
25 first thing I want to ask you about is whether you or any

1 close friends or close family members have been victims of gun  
2 violence. Anybody who's been shot, had their friends shot, or  
3 otherwise been what you would consider a victim of gun  
4 violence or had, you know, close family members who have?  
5 Anyone in this section of the jury?

6 Anyone in this section of the courtroom?

7 Anyone in this section? Yes, ma'am, Ms. Burns. I'm  
8 sorry. No. I've got the wrong page. Ms. Hayden.

9 JUROR #36: My husband --

10 THE COURT: Can you stand up? I can't hear you. I'm  
11 sorry.

12 JUROR #36: My ex-husband is a teacher, and his class  
13 was held hostage by a student with a gun.

14 THE COURT: How long ago did that happen?

15 JUROR #36: It was in 1994 or '95.

16 THE COURT: And did everyone get out okay?

17 JUROR #36: Yes. They had to call the SWAT team, but  
18 they were fine.

19 THE COURT: Were you married to him at the time?

20 JUROR #36: Yes.

21 THE COURT: That must have been terrifying for you.

22 JUROR #36: I didn't know it was going on.

23 THE COURT: Until afterward?

24 JUROR #36: I heard it on KMOX, yeah.

25 THE COURT: So do you have -- do you believe that

1 would affect your ability to serve fairly in this case? This  
2 case does involve firearms. That's why I'm asking.

3 JUROR #36: No.

4 THE COURT: All right. Thank you.

5 So now I want to ask a little more generally about  
6 being a victim of any other serious crime, and I would include  
7 anything, obviously, that would be -- include violence or  
8 anything you believe is -- you felt was a serious crime if you  
9 or close family members or close friends have been victims of  
10 crime of any type.

11 So let me start with numbers 1 through 6. Anyone  
12 there who has been a victim of a crime or had close friends or  
13 family members who have been?

14 Yes, ma'am, #3, Ms. French.

15 JUROR #3: I had my wallet stolen out of my purse,  
16 and they used my charge card and debit card.

17 THE COURT: They used your -- yeah, so -- and how  
18 long ago did that happen?

19 JUROR #3: About four years ago.

20 THE COURT: All right. Thank you.

21 Others on that row? Yes, #1.

22 JUROR #1: We've had our car stolen twice from the  
23 front of our house, our moped stolen from our backyard, and  
24 our lawn mower stolen.

25 THE COURT: Okay. And I should have asked this

1 question earlier of the other person. Do you have any -- how  
2 do you feel that law enforcement handled -- I assume you  
3 reported those thefts to the police?

4 JUROR #1: Uh-huh.

5 THE COURT: How do you feel about how law enforcement  
6 handled your reports?

7 JUROR #1: Some of them, very well. Some of them,  
8 not so well.

9 THE COURT: In the "not so well" cases, what was  
10 wrong?

11 JUROR #1: Well, when they found our van in  
12 Florissant, you know, they fingerprinted the inside and  
13 everything like that, very little details, and then in  
14 St. Louis city, they didn't even bother searching the inside  
15 of the van or doing any sort of extra, you know, investigation  
16 on it.

17 THE COURT: Did -- were any of the perpetrators  
18 caught in any of these circumstances?

19 JUROR #1: No.

20 THE COURT: Okay. Do you believe that your feelings  
21 about the way that that was investigated would have any effect  
22 on your ability to serve in this case?

23 JUROR #1: No.

24 THE COURT: All right. And, Ms. French, I should  
25 have asked you the same question. I assume you reported your

1 wallet being stolen and your cards being used?

2 JUROR #3: Correct.

3 THE COURT: How do you feel? What's your opinion of  
4 how law enforcement handled that report or the -- any  
5 investigation?

6 JUROR #3: The place that I was at was one county,  
7 and where it was used was another, and so I had to communicate  
8 with the second county, and, you know, I would call. It was  
9 very hard. They wanted me to go in person up there, and I  
10 never did follow through on that.

11 THE COURT: Did -- and so no one was ever --

12 JUROR #3: I -- they credited my account, you know,  
13 credit card.

14 THE COURT: Right, but nobody was ever apprehended  
15 for that crime?

16 JUROR #3: No.

17 THE COURT: All right. Anyone else on that row?

18 Yes, ma'am, #6.

19 JUROR #6: I had my identity stolen.

20 THE COURT: Your identity?

21 JUROR #6: Yes.

22 THE COURT: And how did that happen?

23 JUROR #6: Someone had gotten my Social Security  
24 number and used it to get a phone bill -- to get a phone.

25 THE COURT: To get a phone. And did -- what was the

1 upshot of that? What happened as a result of that?

2 JUROR #6: The investigator that was taking care of  
3 it got it all straightened out.

4 THE COURT: Okay.

5 JUROR #6: And everything was taken off of my report.

6 THE COURT: Was that on your credit report?

7 JUROR #6: Yes.

8 THE COURT: All right. People on the second row,  
9 anyone there who's been a victim of crime?

10 #11, Ms. Dohack.

11 JUROR #11: Yes. I had cash stolen out of my wallet  
12 from a coworker during work.

13 THE COURT: But you knew who did it or you found out?

14 JUROR #11: Yes.

15 THE COURT: And did anything happen to that person?

16 JUROR #11: Yes. They were arrested.

17 THE COURT: They were arrested. How do you feel that  
18 it was handled by law enforcement generally?

19 JUROR #11: It was very effective.

20 THE COURT: Okay. And then, yes, #8, Ms. Rothery.

21 JUROR #8: So when I was young, I was approached by a  
22 pedophile, and he attempted a lewd act.

23 THE COURT: And was he apprehended?

24 JUROR #8: I don't know. I know we were brought  
25 down, you know, to line-ups to try to identify him.

1 THE COURT: And were you able to identify one, or do  
2 you remember?

3 JUROR #8: I did not.

4 THE COURT: Yeah. And that sounds like it was awhile  
5 back, but do you have any feelings about how it was handled by  
6 law enforcement at that time?

7 JUROR #8: Well, they were pretty mad at us kids  
8 because we couldn't identify this person in the lineup  
9 because, apparently, he was going around the area to several  
10 other young girls.

11 THE COURT: And so there were a number of victims?

12 JUROR #8: Correct.

13 THE COURT: And nobody could identify him?

14 JUROR #8: Right.

15 THE COURT: And the police sort of were like --

16 JUROR #8: Well, it was frustrating, I'm sure, yeah.

17 THE COURT: Yeah, but so they expressed some kind of  
18 dissatisfaction that you couldn't --

19 JUROR #8: Yeah.

20 THE COURT: -- pick somebody out? Okay. Thank you.  
21 Others on the --

22 JUROR #8: I also had --

23 THE COURT: Oh, yeah.

24 JUROR #8: My credit card was stolen -- the number,  
25 just the number. It wasn't really the physical card, and it

1 was used in Canada.

2 THE COURT: And I assume that one was -- did you  
3 just -- did you report that to the police, or did you just  
4 report it to the credit card company?

5 JUROR #8: The credit card company reported it to me.  
6 I did attempt to report it to the police, but there wasn't  
7 much they could do.

8 THE COURT: Do you have any opinion about how that  
9 was handled?

10 JUROR #8: Yes.

11 THE COURT: All right. Anyone else on that row?

12 And then the front row of people, anyone there who's  
13 been a victim or had close friends or family?

14 Yes, ma'am, Ms. Dooley.

15 JUROR #14: My car was broken into in Forest Park.

16 THE COURT: And do you have -- was anyone ever  
17 apprehended for that?

18 JUROR #14: No.

19 THE COURT: Did you report it to the police?

20 JUROR #14: Yes.

21 THE COURT: Do you have any opinion about how they  
22 handled the investigation or that report?

23 JUROR #14: No. They were fine.

24 THE COURT: It was okay?

25 JUROR #14: Yeah.



1 THE COURT: All right. Anyone else there?

2 Yes, Mr. Councilor.

3 JUROR #16: Fifteen years ago or so, my cousin got  
4 mugged.

5 THE COURT: And did they -- did anyone check the --  
6 or find out who did that?

7 JUROR #16: I don't even know if he went to the  
8 police or anything. I just heard that, you know, he had been  
9 mugged, I think, and the guy was armed, so . . .

10 THE COURT: Okay. And then the next group of people,  
11 numbers 17 through 20?

12 Yes, #17, Ms. Williams.

13 JUROR #17: My house was broken into when I lived in  
14 Phoenix, Arizona, back in 2005.

15 THE COURT: And was anyone ever apprehended for that?

16 JUROR #17: No.

17 THE COURT: Did you report it to the police?

18 JUROR #17: I did.

19 THE COURT: And did you -- what -- do you have any  
20 opinion about how they handled the investigation?

21 JUROR #17: Well, I mean it was my fault because I  
22 did not have lighting or anything like that. I think it was  
23 somebody that I knew but was never able to --

24 THE COURT: Never able to prove it?

25 JUROR #17: Knew who it was.

1 THE COURT: But you don't hold anything against --

2 JUROR #17: No.

3 THE COURT: -- the police for that?

4 JUROR #17: No, because --

5 THE COURT: All right. Anyone else on that row?

6 The next row of people?

7 Yes, let's see. Hold on. I've got my numbers messed  
8 up. Mr. -- is it Calotes?

9 JUROR #22: Yes.

10 THE COURT: Tell me who in your --

11 JUROR #22: It was identity thief about 2002. I got  
12 a phone bill under my name. I used to live in an apartment  
13 building, so I think he must have gotten my number through,  
14 you know, mails under my name.

15 THE COURT: Right. And did -- did they ever find out  
16 who did that?

17 JUROR #22: The City of Maryland -- I reported it to  
18 the City of Maryland Heights, so it was handled very well by  
19 the police. It was some young teenagers.

20 THE COURT: Yeah. And did you have -- were you --  
21 did you have any repercussions, I guess, to your own credit or  
22 anything like that?

23 JUROR #22: I was advised by the City of Maryland  
24 Heights to report it to, you know, the credit reporting agency  
25 like Experian and all that stuff.

1 THE COURT: And you did that?

2 JUROR #22: And I did that.

3 THE COURT: Okay. Thank you.

4 All right. Others on that wall row?

5 Yes, Ms. Mitchell.

6 JUROR #24: My mom was the victim of rape, and my  
7 son's girlfriend was raped down at Mizzou.

8 THE COURT: How long ago did those things happen?

9 JUROR #24: It's his ex-girlfriend now, but it was  
10 probably 2004ish, something like that, 2003.

11 THE COURT: And what about your mom?

12 JUROR #24: You know, when this came -- this happened  
13 to my son's girlfriend was when my mom told all of us, and so  
14 it was -- my mom is 78. I don't even know. Maybe 25, 30 when  
15 it happened.

16 THE COURT: Right, so a long time ago?

17 JUROR #24: Yeah.

18 THE COURT: With regard to the more current incident  
19 that happened in Columbia, is -- do you have any opinion about  
20 how that was handled by law enforcement?

21 JUROR #24: I think it was handled really well, but  
22 she had some law enforcement in her family at that time.

23 THE COURT: Okay. All right. Thank you.

24 Others in that row?

25 Number 27, Mr. Orban.

1 JUROR #27: Yeah. My mom had the radio stolen out of  
2 her car out of our driveway before, and I, myself, have been a  
3 victim of online credit card fraud.

4 THE COURT: And when you were the victim of online  
5 credit card fraud, did you report that to the police?

6 JUROR #27: I did not. I just reported it to the  
7 bank, and the bank took care of it.

8 THE COURT: Okay. And so the bank then handled it?

9 JUROR #27: Yeah.

10 THE COURT: Yeah. All right. And then the next  
11 group of people over here, numbers 28 through 31, anyone  
12 there?

13 Yes, Ms. Hayes.

14 JUROR #29: I had my car broken into at my workplace  
15 about 10 years ago.

16 THE COURT: And did you report that to the police?

17 JUROR #29: Yes.

18 THE COURT: And were they able to apprehend -- find  
19 out who did it?

20 JUROR #29: No.

21 THE COURT: Do you have any opinion about how the  
22 police handled it?

23 JUROR #29: It was fine.

24 THE COURT: Okay. And then the last row of people,  
25 anyone a victim of a crime?

1 Yes, Mr. Pulley.

2 JUROR #32: We've had our credit card information  
3 stoled about three times, and then my daughter had a date rape  
4 case about four years ago.

5 THE COURT: On the credit cards, did you report that  
6 to the police or just to the credit card company?

7 JUROR #32: Just the credit card.

8 THE COURT: And with your daughter's situation, did  
9 she report that to the authorities?

10 JUROR #32: Yes.

11 THE COURT: And was the person -- was there -- what  
12 happened as a result?

13 JUROR #32: Basically nothing.

14 THE COURT: How do you feel about how law enforcement  
15 handled that?

16 JUROR #32: Really not very well. I thought they  
17 should have been able to handle somebody who had a pattern of  
18 being accused.

19 THE COURT: And what jurisdiction was that in?

20 JUROR #32: She was at Cape Girardeau.

21 THE COURT: Okay.

22 JUROR #32: The Southeast Missouri State college.

23 THE COURT: All right. Thank you.

24 Others on that row?

25 All right. For any of you all who have answered

1 these questions, is there anything about the fact that you  
2 were -- you or your family members were victims of crimes or  
3 about the way that these things were handled by law  
4 enforcement or the justice system that you think would affect  
5 your ability to be fair in this case?

6 And I guess, Mr. Pulley, most recently, let me ask  
7 you about your case. Do you think that would affect your  
8 ability to be fair -- your daughter's situation?

9 JUROR #32: Not really.

10 THE COURT: Okay. And then, yes, #24.

11 JUROR #24: In the case of my son's girlfriend, it  
12 just -- I don't know if it's important. It turned out to be a  
13 family friend. Something was slipped in her drink, so they  
14 knew who did it.

15 THE COURT: Yeah, so they were able to find out who  
16 the person was?

17 JUROR #24: Yeah, they knew.

18 THE COURT: And then you did think it was handled  
19 well by police?

20 JUROR #24: (Nods head up and down.)

21 THE COURT: All right. Anybody who thinks this might  
22 affect their ability -- these things might?

23 Is there anybody here who has had a particular bad  
24 incident or experience with law enforcement in any way, maybe  
25 arrested for something you didn't do or hassled by police for

1 no reason? Anybody who has something like that that has  
2 stayed with them?

3 All right. Thank you.

4 Oh, yes, sir, Mr. Pulley.

5 JUROR #32: I'm not sure this counts, but a coworker  
6 of mine is a sister of a man who was one of those  
7 well-publicized cases where DNA cleared him of murder.

8 THE COURT: And so her -- so her brother was --  
9 was -- was he convicted of murder?

10 JUROR #32: Yeah. He was in prison, and then DNA  
11 cleared him.

12 THE COURT: And then DNA later cleared him?

13 JUROR #32: Yeah.

14 THE COURT: Do you think that -- how did that make  
15 you feel about law enforcement?

16 JUROR #32: I just -- you know.

17 THE COURT: Those cases do happen, and they have been  
18 in the news, I know.

19 JUROR #32: Right.

20 THE COURT: Because DNA -- unfortunately, DNA doesn't  
21 solve every crime, of course, but is there anything about that  
22 that you think would affect your ability to serve in this  
23 case?

24 JUROR #32: I think it was mostly a case where  
25 circumstances made him the most likely person but it turned

1 out it was actually someone else.

2 THE COURT: Okay. All right. Thank you.

3 All right. Now I want to tell you a little bit about  
4 this case. I do -- in terms of the length of the case, I do  
5 think this case will last through Thursday for sure, probably  
6 into Friday, and here's how we do our normal trial day. We  
7 usually start at 9:00. We stop at 5:00. We take an hour for  
8 lunch. It's usually 12:30 to 1:30, but that can vary, and we  
9 take two recesses, one in the morning and one in the  
10 afternoon, usually 15 minutes. So that's the schedule we  
11 would normally have if you are selected to serve on this jury.  
12 If you have any physical issues or hearing issues, we can move  
13 you around the jury box or we can take more frequent breaks if  
14 necessary, but that is the schedule. What I need to know is  
15 if there's anyone on this panel for whom serving -- and this  
16 is relatively short by federal trial standards, but is there  
17 anyone who serving the rest of this week would cause a  
18 particular hardship or you have some physical reason you do  
19 not believe you could follow that schedule?

20 All right. Thank you.

21 And another question I wanted to ask you has to do  
22 with the -- well, hold on a second. I need to look at  
23 something else before I ask you that.

24 Yeah. All right. So some people have deeply held  
25 religious or moral views that they should not sit in judgment



1 of another human being, and there are many people who have  
2 that religious belief that one person shouldn't sit in  
3 judgment on another person who do not believe that interferes  
4 at all with their ability to serve as a juror because when  
5 you're on jury duty, your job is to decide whether the  
6 Government has met its burden of proving the Defendant guilty  
7 beyond a reasonable doubt; however, some people who have that  
8 view think it does interfere with their ability to serve as a  
9 juror because they think that that would be sitting in  
10 judgment on another human being. Is there anybody here who  
11 thinks that because of such a deeply held personal or  
12 religious view they would not be able to serve as a juror on  
13 this case?

14 All right. Thank you.

15 My brain is not working here today, and I apologize.  
16 One question I do have -- oh, I know. Here it is on my notes.  
17 Does everyone here understand that the only questions that the  
18 jury will be asked -- there are three charges in this case,  
19 and the only thing the jury will be asked will be to determine  
20 whether the Government has proved each of those charges beyond  
21 a reasonable doubt. If -- if the Defendant is convicted of  
22 one or more charges, the jury has no role in sentencing. Do  
23 you all understand that?

24 All right. And you are not to consider sentencing at  
25 all in reaching your decision because it's not -- you know,

1 it's not an issue of whether -- your decision is going to be  
2 whether the Government met its burden of proof.

3 And I believe that's all I have, although the lawyers  
4 will have a chance to ask some and I will probably remember  
5 some other things I've forgotten since I've forgotten so many  
6 already today, but I do want to ask you this. I've been  
7 asking you all these questions and asking you can you be fair  
8 and is there anything that would affect your decision. I may  
9 have forgotten to ask you something that you've been sitting  
10 here wondering why I haven't asked it the whole time. Is  
11 there anything else about yourselves or about this case in  
12 particular that makes you believe there's something we should  
13 know about you when we go through the jury selection process  
14 or a feeling you have that it might be hard for you to serve  
15 on this case for some reason I haven't asked?

16 All right. Thank you.

17 The lawyers will now inquire. Mr. Stevens, you may  
18 proceed.

19 MR. STEVENS: Thank you, Judge.

20 Good morning again. It is still morning. Thank you  
21 all for being here, particularly considering the weather.  
22 Obviously, this is a pretty hearty group considering how cold  
23 it is outside, so thank you all for being here. I'll get  
24 right into it. As the Judge mentioned, I wanted to ask just  
25 about potential witnesses in this case and whether anyone knew

1 those people.

2 Special Agent Richard Zayas with ATF -- does anyone  
3 know him? Is anyone familiar with him?

4 Or Special Agent Jason Townsend with ATF -- does that  
5 name ring a bell?

6 Special Agent Jeff Eleveld with ATF?

7 Detective Edward Clay with the St. Louis Metropolitan  
8 Police Department -- does anyone know him?

9 Okay. I see no hands.

10 Also, I want to mention that during the course of  
11 this case you're going to hear names of individuals by the  
12 name of Robert Washington and Michael Twitty. Do those names  
13 ring a bell at all? Does anyone know Robert Washington or  
14 Michael Twitty?

15 All right. And I want to make clear, obviously, in  
16 this case, we have a single Defendant, Daryl Warren here. The  
17 jury in this case, once it's picked, will decide the case just  
18 regarding Mr. Warren, all right, and I expect, like I say,  
19 you'll hear the names Robert Washington and Michael Twitty.  
20 Neither Mr. Jimerson or I can indicate to you anything that  
21 might have happened with those two individuals in connection  
22 with this case. Is there anyone that would have a problem  
23 deciding this case only regarding Mr. Warren and not knowing  
24 anything about those other individuals? Anyone at all?

25 Okay. I see no hands.

1 THE COURT: Can I interrupt you? There were a couple  
2 of questions I forgot that I just remembered.

3 MR. STEVENS: Sure, certainly, Judge.

4 THE COURT: There were a couple of you I wanted to  
5 ask something else to. Ms. Toney -- let's see -- #31, there  
6 you are; what do you do at St. Luke's?

7 JUROR #31: Patient care tech.

8 THE COURT: Okay. And, Mr. Baybo, what is -- can you  
9 tell me what your employer -- it says you're building support.  
10 Can you tell me what you do?

11 JUROR #34: Pretty much a lot. I help at a charter  
12 school, doing attendance, running reports for administration,  
13 making phone calls to parents, substitute teaching,  
14 intervention work, things like that.

15 THE COURT: So a whole variety of things. Okay.  
16 Thank you. And it is a charter school that you're at?

17 JUROR #34: Yes, ma'am.

18 THE COURT: Okay. And, Ms. McMorris, are you  
19 currently employed?

20 JUROR #21: No, no, ma'am. No, sir -- ma'am.

21 THE COURT: Have you worked in the past?

22 JUROR #21: Yes.

23 THE COURT: Tell me what jobs you've had in the past.

24 JUROR #21: I was a dishwasher.

25 THE COURT: Okay. And for a restaurant?

1 JUROR #21: A hotel.

2 THE COURT: For a hotel. Okay. Okay. Thank you.

3 And, Mr. Hochecker, what is -- what is your -- what's  
4 your employer?

5 JUROR #15: Roto-Die. It's a tool and die company.

6 THE COURT: A tool and die?

7 JUROR #15: Yeah.

8 THE COURT: Okay. And it's RotoMetrics?

9 JUROR #15: Yeah.

10 THE COURT: I should have figured that out from the  
11 name, but I couldn't, so that's what I wondered. Thank you.

12 Okay. A couple of others. Ms. Dohack, what do you  
13 teach?

14 JUROR #11: I'm a fifth grade special education aide,  
15 so we teach all the subjects.

16 THE COURT: Yeah. Thank you.

17 And I had a couple of others I didn't know. Let's  
18 see. Mr. Seviere, if I'm pronouncing that right, are you  
19 currently employed?

20 JUROR #5: No, ma'am.

21 THE COURT: Have you worked in the past?

22 JUROR #5: Yes.

23 THE COURT: Tell me what jobs you've had in the past.

24 JUROR #5: Master Logos Print Company.

25 THE COURT: All right. Thank you. I apologize,

1 Mr. Stevens. I told you I was going to ask that before, and  
2 then I forgot.

3 MR. STEVENS: Oh, thank you, Judge.

4 All right. For those of you who -- many of you,  
5 unfortunately, had friends and family who have had some  
6 criminal history, have had some brushes with law enforcement,  
7 and I just wanted to discuss that with a few of you. #9,  
8 Ms. Roberts, you had indicated that you have a cousin who's  
9 currently serving time, is that right?

10 JUROR #9: Yes.

11 THE COURT: Okay. Do you have any concern at all  
12 that if you're on the jury in this case that you might be  
13 considering that cousin when you're considering this case,  
14 given that he's currently incarcerated?

15 JUROR #9: No.

16 THE COURT: That won't be a problem for you?

17 JUROR #9: No.

18 THE COURT: All right. You mentioned it was an  
19 assault on a police officer. Do you know where that occurred,  
20 which department that police officer was with?

21 JUROR #9: St. Louis City.

22 MR. STEVENS: All right. And when did that occur?

23 JUROR #9: He was convicted last year. Thanksgiving  
24 2010.

25 MR. STEVENS: Okay. Thank you.

1 And, #19, is that Mr. Calkins?

2 JUROR #19: (Nods head up and down.)

3 MR. STEVENS: You also indicated that your father  
4 went to prison for about eight to 10 years, is that right, on  
5 a drug possession charge?

6 JUROR #19: Yes, yes.

7 MR. STEVENS: And you thought that that was a federal  
8 case --

9 JUROR #19: Yes.

10 MR. STEVENS: -- is that right? Anything about that  
11 case that you would hold against the Government here in this  
12 case? Will you be considering that at all when you consider  
13 this case?

14 JUROR #19: No.

15 MR. STEVENS: All right. That won't be a problem for  
16 you?

17 JUROR #19: No.

18 MR. STEVENS: All right. Thank you, sir.

19 That brings me to #31, Ms. Toney.

20 THE COURT: Can you use the mike, Mr. Stevens? I'm  
21 having difficulty hearing you, so --

22 MR. STEVENS: Yes, Judge.

23 You had an uncle who's currently serving 10 years, is  
24 that right?

25 JUROR #31: Uh-huh.

1 MR. STEVENS: Same question to you. Given that he's  
2 currently imprisoned, will that be a concern for you in this  
3 case when you're considering this case?

4 JUROR #31: No.

5 MR. STEVENS: All right. You're confident that you  
6 can set that aside?

7 JUROR #31: Uh-huh.

8 MR. STEVENS: All right. Thank you.

9 #32, Mr. Pulley, your sister-in-law's sister was --

10 THE COURT: Mr. Stevens, would you please use the  
11 mike?

12 MR. STEVENS: Yes. Was convicted of murder?

13 JUROR #33: Excuse me?

14 MR. STEVENS: Or manslaughter, is that right?

15 JUROR #33: I believe it was manslaughter, sir.

16 MR. STEVENS: Okay. And is currently serving an  
17 eight-year term. Will that be a problem for you in this case?

18 JUROR #33: No.

19 MR. STEVENS: Okay. I think you had indicated that  
20 they didn't get her off the street fast enough. That doesn't  
21 sound like that would be a problem for you, is that fair?

22 JUROR #33: Uh-huh.

23 MR. STEVENS: Okay. You have to say yes or no, sir,  
24 so the court reporter can take it down.

25 JUROR #33: Yes.



1 MR. STEVENS: Okay. Thank you.

2 And that brings me back to #1, Ms. Reinhardt. You  
3 had indicated that your brother-in-law was currently -- I'm  
4 sorry -- your uncle is a ward of the state and is currently  
5 locked up; is that going to be a problem for you in this case  
6 at all?

7 JUROR #1: No.

8 MR. STEVENS: All right. Thank you. You'd also  
9 mentioned your -- was it your uncle-in-law that was gunned  
10 down in connection with cocaine?

11 JUROR #1: Uh-huh, yes.

12 MR. STEVENS: Okay. Will that be a problem for you  
13 in this case? There's a cocaine conspiracy count in this  
14 particular case. Will you be able to set that aside and just  
15 consider the facts in this case?

16 JUROR #1: Yes.

17 MR. STEVENS: Will that be a problem for you at all?

18 JUROR #1: No.

19 MR. STEVENS: Okay. And as I understand, you didn't  
20 know him, is that right?

21 JUROR #1: Correct.

22 MR. STEVENS: Okay. Thank you.

23 As the Judge indicated, in Count III of this case,  
24 this Defendant is charged with conspiracy to possess with  
25 intent to distribute cocaine, and he is not charged with

1 actually possessing the cocaine. He's charged in a conspiracy  
2 to possess with intent to distribute cocaine. In order to  
3 prove this Defendant guilty beyond a reasonable doubt on that  
4 conspiracy, does everyone understand that the Government won't  
5 be required to prove that he actually possessed the cocaine?  
6 Does everyone understand that, that in a conspiracy we don't  
7 have to prove that he actually possessed the cocaine, simply  
8 that he conspired to --

9 MR. JIMERSON: Let me object, Your Honor. He's  
10 improperly instructing this jury.

11 THE COURT: Yeah. I'll instruct you on the law.  
12 What he's saying isn't wrong, but I also -- it's not -- it's  
13 not the time for instructions on the law. I will tell you  
14 what the law is on a conspiracy.

15 MR. STEVENS: Thank you, Judge.

16 THE COURT: Sustained.

17 MR. STEVENS: Is there anyone who would require the  
18 Government to prove that this Defendant actually possessed  
19 cocaine in this case?

20 THE COURT: Let me ask you this. Is there anyone who  
21 would ask -- who would require the Government to prove  
22 something that's not in the jury instructions? So you're  
23 basically asking can they follow the law as I give it to them?

24 MR. STEVENS: Exactly, Judge.

25 THE COURT: That's really all you're asking, so why

1 don't you ask a question that's not trying to tell them what  
2 the law is because that's my job.

3 MR. STEVENS: I understand.

4 There were many of you on the panel who also had  
5 friends and family in law enforcement, and the Judge followed  
6 up on that and asked you about whether you could all be fair.  
7 You all indicated that you could be fair, but I want to ask a  
8 similar question, and that is, has anyone -- any of those  
9 people who had friends or family in law enforcement or even  
10 anyone else on the jury panel -- is anyone going to  
11 automatically believe a law enforcement witness over anyone  
12 else simply because they are a law enforcement witness,  
13 whether they're ATF or police, based on your relationship with  
14 your friend or family or on anything else? Is there anyone  
15 who would do that?

16 All right. I see no hands.

17 And, again, the Judge will instruct you on how to  
18 determine the credibility of witnesses and what factors you  
19 can consider. Can everyone apply those instructions across  
20 the board to all witnesses in this case fairly?

21 All right. Is there anyone who couldn't do that?

22 I see no hands.

23 #7, Mr. Payne, the Judge asked you some specific  
24 questions. You had indicated you're a member of the NRA. The  
25 two gun counts in this case, as the Judge indicated, are

1 possessing a firearm or firearms in furtherance of a drug  
2 trafficking crime and being a felon in possession of a  
3 firearm. Do you have any problem with the federal law that  
4 prohibits people from possessing firearms in furtherance of a  
5 drug trafficking crime?

6 JUROR #7: No.

7 THE COURT: Or do you think that felons should be  
8 allowed to possess firearms?

9 JUROR #7: No.

10 MR. STEVENS: All right. Thank you, sir.

11 Unfortunately also, a lot of us have been victims of  
12 crime, and the Judge asked you about that. Specifically, #11,  
13 Ms. Dohack, you had indicated that your -- was it your wallet  
14 was stolen by a coworker at work?

15 JUROR #11: The contents of it, the cash out of the  
16 wallet.

17 MR. STEVENS: The cash out of the wallet. Was that  
18 captured on videotape at work there?

19 JUROR #11: It was not.

20 MR. STEVENS: Okay. Was there -- I assume there  
21 wasn't a police officer there who witnessed that or anything  
22 like that?

23 JUROR #11: A police officer, no.

24 MR. STEVENS: Right. Okay. For anyone on the jury  
25 panel that indicated they were a victim of a crime, did anyone

1 have the benefit of having a police officer there to witness  
2 it or have it captured on videotape?

3 Okay. I see no hands.

4 May I have just a moment, Judge?

5 Does anyone on the jury panel have any friends or  
6 relatives who do criminal defense work in any capacity? I  
7 know a few of you, in response to the law enforcement  
8 question, indicated that you know lawyers of one sort or  
9 another. Is there anyone who is a close friend or a family  
10 member of someone who does criminal defense work?

11 Yes, ma'am, #35.

12 JUROR #35: I have a friend who's a criminal defense  
13 attorney.

14 MR. STEVENS: I'm sorry?

15 JUROR #35: I have a friend who's a defense attorney.

16 MR. STEVENS: All right. And is that here in the  
17 city of St. Louis?

18 JUROR #35: Yes, it is.

19 MR. STEVENS: Who is that if you don't mind my  
20 asking?

21 JUROR #35: Joe Neill.

22 MR. STEVENS: Joe Neill?

23 JUROR #35: Yes.

24 MR. STEVENS: Okay. Do you discuss his cases with  
25 him much?

1 JUROR #35: No.

2 MR. STEVENS: All right. Do you know anything about  
3 any of the cases that he does?

4 JUROR #35: Just one that was in the news in the last  
5 year or two, but that would be it. Because it was in the  
6 news, that's the only reason.

7 MR. STEVENS: And would your relationship with  
8 Mr. Neill -- would that affect your ability to be fair and  
9 impartial here at all?

10 JUROR #35: Not at all, no.

11 MR. STEVENS: All right. Thank you.

12 Anyone else on the panel?

13 Just a moment, Judge.

14 Thank you, all, for your time. Thank you.

15 THE COURT: Mr. Jimerson, you may inquire.

16 MR. JIMERSON: Thank you, Your Honor. May it please  
17 the Court?

18 THE COURT: Yes.

19 MR. JIMERSON: Mr. Stevens. Good afternoon, pretty  
20 close to afternoon, ladies and gentlemen of the Jury. Again,  
21 I'm Herman Jimerson. Most of you said -- well, all of you  
22 said you didn't know me, so I'll give you another chance and  
23 stand in front of you. Have you ever seen me before, or do  
24 you have -- do you know me? It's one of the hardest questions  
25 I ask because I always get people saying they don't know me,

1 and I feel bad, but that's okay because I mean it's important  
2 just to -- this process -- and Her Honor has gone through it  
3 all, so there's a reason when we get up we don't have a lot to  
4 say, okay.

5 THE COURT: Can you pull the mike around, so it's  
6 like pointing toward you, and it will help me a little.

7 MR. JIMERSON: I'm so sorry, Your Honor.

8 THE COURT: There. Thank you.

9 MR. JIMERSON: You told Mr. Stevens that, and I  
10 didn't follow. I'm sorry.

11 When we get up and we -- there's not a lot to say  
12 because Her Honor has said a lot of it in terms of the  
13 questioning process. We're just trying to determine -- mostly  
14 to determine how you feel about certain things. There's no  
15 right or wrong answers in this process. Okay. Some things  
16 might be hard to answer. Some things might be easier to  
17 answer, but all things are right because it involves you.  
18 Okay.

19 So with that in mind, one thing -- one thing that Her  
20 Honor asked but I'm going to ask it further because I think it  
21 goes to your ability to sit here as well -- is there anybody  
22 here that maybe is taking medication that, perhaps, makes you  
23 drowsy or to have certain needs, and the reason I'm asking  
24 that is because, if so, we need to let the Court know so we  
25 can make accommodations for you. Is there anybody here that

1 has any special needs regarding medication? Okay. Those  
2 things are, you know, pills, insulin, those kind of things  
3 like that. Okay. All right.

4 Now, one of the -- you've heard my client,  
5 Mr. Warren, and I ask Mr. Warren to stand up again. Can you  
6 please stand up for them? Likewise, earlier, we stood up, and  
7 Mr. Warren lives in St. Louis city, in the south side. Does  
8 anybody here know Mr. Warren?

9 Okay. Thank you, Mr. Warren. Thank you.

10 We've heard a ton of charges here. We heard a felon  
11 in possession of a weapon. We heard conspiracy to commit  
12 cocaine. We heard -- and there's other charges there. My  
13 question to you -- now that you've heard that my client has a  
14 conviction regarding -- a conviction and that's why we have a  
15 charge of felon in possession of a weapon, does anyone here  
16 think automatically because he has that conviction that he's  
17 guilty of any other charge? Does anybody here believe that?

18 So even though you heard -- and I'm taking the ones  
19 saying no. So even though you heard, ladies and gentlemen of  
20 the jury, that -- that he may have a conviction, you won't  
21 necessarily hold that against him because he has a conviction,  
22 is that accurate?

23 Okay. And I know and everybody is nodding their  
24 head. I just want to get some people on record. Okay. And  
25 I'll start again. Like everyone else, Ms. Reinhardt, do you



1 believe that?

2 JUROR #1: Yes.

3 MR. JIMERSON: Okay. Even though he has a conviction  
4 doesn't necessarily mean that he's guilty of the charges we  
5 have here today --

6 JUROR #1: Correct.

7 MR. JIMERSON: -- is that correct? Again, we go back  
8 to what Her Honor said earlier, the presumption of innocence,  
9 okay, and even though someone has a prior situation, that  
10 presumption still applies; would you agree, Ms. Reinhardt?

11 JUROR #1: Yes, I agree.

12 MR. JIMERSON: Okay. And I'm asking you guys  
13 generally, and I saw head nods. Does everybody agree with  
14 that proposition Ms. Reinhardt has said and agree with me?

15 JURORS IN UNISON: Yes.

16 MR. JIMERSON: Okay. So we're good on that. All  
17 right.

18 Now, another area of law that we want to hear, that  
19 you're going to hear about is -- and I assume the Judge is  
20 going to issue instructions, and if Her Honor does issue this  
21 instruction, then basically we're going to -- we're going to  
22 ask that you follow it, and that instruction is called  
23 entrapment. Okay. Now --

24 THE COURT: Now, you objected to him instructing on  
25 the law, and so I think that this is the same thing. I mean

1 the general presumption of innocence, burden of proof, those  
2 things, you can inquire into, but beyond that, I'll be  
3 instructing on the law.

4 MR. JIMERSON: Okay. Your Honor, I wasn't going to  
5 go further other than just a general, but I'll stay away from  
6 it now.

7 THE COURT: Okay. Well --

8 MR. JIMERSON: I appreciate it.

9 THE COURT: I don't know. If you have a general  
10 question, maybe you can do it.

11 MR. JIMERSON: Yeah. The general question is -- is  
12 that I talked about entrapment. Again, I'm not permitted to  
13 tell you what it is, and I'm not going to do that. Okay. My  
14 question just generally is, if you receive instruction of  
15 entrapment, you will listen to that, you will try to follow it  
16 and consider that instruction, is that correct?

17 JURORS IN UNISON: (Nodding.)

18 MR. JIMERSON: Same head nods, right? Okay. All  
19 right. So, in other words, whatever the instructions the  
20 Judge gives you, those instructions, you're going to pay  
21 attention to and not necessarily try to bring in your outside  
22 influence or whatnot, is that correct?

23 JURORS IN UNISON: Yes.

24 MR. JIMERSON: Head nods again, everybody? Okay.  
25 Does anybody disagree with that at all?

1 JURORS IN UNISON: No.

2 MR. JIMERSON: Okay. All right. Okay. We're  
3 moving. Likewise, there will be another -- instructions, the  
4 same thing. You know, that's a withdrawal instruction. It's  
5 called withdrawal. In other words, the Judge will tell you  
6 what that is.

7 MR. STEVENS: Judge, can we approach here, please?

8 THE COURT: You may.

9 MR. STEVENS: Thank you.

10 (A bench conference was held on the record and outside of  
11 the hearing of the jury panel as follows:)

12 MR. STEVENS: Judge, I'm going to object on the basis  
13 of him getting into the instructions but further that this is  
14 an 846 conspiracy. There can't be a withdrawal under the  
15 instructions. There's no overt act required, and the  
16 instructions explicitly say that you can't have a withdrawal  
17 defense in a conspiracy that doesn't require an overt act, so  
18 there won't be a withdrawal instruction in this case.

19 THE COURT: And in any event, whether there is or  
20 not, we'll decide at a later time if you ask for one, but you  
21 can't talk to the jury about it.

22 MR. JIMERSON: Yes, ma'am.

23 MR. STEVENS: Thank you, Judge.

24 THE COURT: So --

25 MR. JIMERSON: Yes, ma'am.

1 THE COURT: Yeah.

2 MR. JIMERSON: Okay. All right.

3 (The following proceedings were held within the hearing  
4 of the jury panel.)

5 MR. JIMERSON: Okay. Moving right along, does  
6 everyone here understand that we're asking that you make an  
7 individual decision in this case if you can, okay? Do you  
8 understand what I mean by that, individual decision? You'll  
9 be sitting with other jurors here, and Her Honor instructed  
10 you that a unanimous decision is required. That simply means  
11 that -- tell me if anyone disagrees. That simply means that  
12 you're sure you could have a unanimous decision, all being the  
13 same, but that decision will be your individual decision; do  
14 we agree with that?

15 JURORS IN UNISON: Yes.

16 MR. JIMERSON: In other words, you as an individual  
17 has the right to make up his or her own mind regarding it, and  
18 you can't be forced into it another way; do you understand  
19 that?

20 JURORS IN UNISON: Yes.

21 MR. JIMERSON: Okay. You have your right to your  
22 determination, and that's your -- that's your decision; we all  
23 agree?

24 JURORS IN UNISON: Yes.

25 MR. JIMERSON: All right. Thank you, Your Honor.

1 THE COURT: All right. Thank you. Now, members of  
2 the jury, what we're going to do now is go through the jury  
3 selection process, and this will take us a little while, and  
4 so you're going to go to lunch, and we're going to keep  
5 working, and I want to tell you what I told you before.  
6 During this time when you'll be in recess, in your lunch  
7 recess, please don't discuss this case at all among yourselves  
8 or with anyone else and please keep an open mind until you do,  
9 you know, you do get on the jury and you hear what's going on.  
10 So please don't talk about this case. You can talk about the  
11 weather. You can talk about spring training. You can talk  
12 about anything you want, but don't talk about this case during  
13 this recess, and so I'm going to ask you to come back at 1:15.  
14 That's an hour and a half for you all, and that'll give us  
15 time to do our work and also eat some food, too. So you will  
16 have -- yes, ma'am.

17 JUROR #14: I know you asked earlier, and we didn't  
18 realize it, but Juror 10 and I used to work together.

19 THE COURT: Okay. Where did you work?

20 JUROR #14: TWA.

21 THE COURT: Okay. And so you realize now you did  
22 work together?

23 JUROR #14: Yes.

24 THE COURT: Well, here's the question I ask when that  
25 happens. If you all were both selected on the jury, could you

1 each exercise your own independent judgment and not just vote  
2 one way because the other person told you to?

3 JUROR #14: Yes.

4 JUROR #10: Yes.

5 THE COURT: You're both saying yes. Okay. And I'll  
6 tell you; one time I had a high school principal on the jury,  
7 and one of his former students was also on the panel, and I  
8 asked him this question, and the principal said, "He never did  
9 anything I told him to do when he was in high school; I don't  
10 see why he would now." But we do want to make sure that we  
11 have 12 jurors who will each individually do what is right and  
12 not just rely on someone else, so do you understand that?

13 JUROR #14: Yes.

14 THE COURT: Yes, sir.

15 JUROR #28: Could I approach?

16 THE COURT: You may.

17 And I'll tell you what; if you don't mind, I'm going  
18 to send the other jurors out while you do that, so if you'll  
19 just wait here.

20 Anybody else have anything else they think we need to  
21 know?

22 All right. The jury panel is excused. This time,  
23 you should take your coats and everything else because you  
24 will not necessarily be sitting in the same seats when you  
25 come back.

1 (A bench conference with Juror #28 was held on the record  
2 and outside of the hearing and presence of the jury panel as  
3 follows:)

4 THE COURT: Okay. All right. Here, this is our  
5 microphone. Yes, sir.

6 JUROR #28: Oh, that's fine. I owned a real estate  
7 company, Second Empire Realty, during the real estate boon,  
8 covered all of south city. I know it very well, all through  
9 Carondelet. I sold the old City Hospital, Benton Park, all  
10 the state streets, and a lot of my clients were the victim of  
11 violent crime, almost always by African-American males, and  
12 that could influence me. You know, your client is an  
13 African-American. It might unduly influence me, and I thought  
14 it was worth mentioning. Rapes and shootings and all sorts of  
15 things, so --

16 MR. STEVENS: Do you feel that you can set that aside  
17 and follow the Court's instructions in this case?

18 JUROR #28: It was a number of different incidences  
19 over a long period of time. That's why. I wouldn't have  
20 brought it up if I thought I could get past that.

21 MR. STEVENS: Okay. So you have concern about  
22 whether you can get past it?

23 JUROR #28: I think I do, yeah. I'm sorry.

24 MR. JIMERSON: Well, don't be sorry for your  
25 feelings. Okay. As I said earlier, you know, that's who we

1 are, that's what you feel.

2 JUROR #28: Right.

3 MR. JIMERSON: And I appreciate you coming up, sir.

4 For the record, what's your name, sir?

5 JUROR #28: Steve Gray.

6 MR. JIMERSON: Mr. Gray, you're Juror #28?

7 JUROR #28: Correct.

8 MR. JIMERSON: You're saying that based on your prior  
9 experience in south St. Louis and based on the prior crimes  
10 committed on customers or people, friends that you knew by  
11 African-American males, you think that would be a difficult  
12 thing for you to set aside?

13 JUROR #28: Yes, I think so.

14 MR. JIMERSON: Okay. All right.

15 JUROR #28: I have a number of friends that live down  
16 there, and they're all -- they've all got stories.

17 MR. JIMERSON: Oh, okay. And for the record, my  
18 client, as you mentioned, is -- you perceive him to be an  
19 African-American male, is that correct?

20 JUROR #28: Yes.

21 MR. JIMERSON: Okay.

22 THE COURT: Okay. Would you just step over; just  
23 step over there for a second, and let me --

24 (Juror #28 left the bench conference.)

25 THE COURT: I assume there's no objection to my



1 excusing him for cause? Can I -- is it okay with you all if I  
2 tell him he can just go ahead and leave?

3 MR. STEVENS: Yes.

4 MR. JIMERSON: Yes, ma'am.

5 THE COURT: Okay. Would you come back, sir?

6 (Juror #28 returned to the bench conference.)

7 JUROR #28: Yes, Your Honor.

8 THE COURT: All right. I am going to excuse you from  
9 service in this case.

10 JUROR #28: Okay.

11 THE COURT: And so you're discharged at this time. I  
12 would appreciate your not talking to anyone else about it or  
13 even telling the other jurors that you have been discharged,  
14 okay?

15 JUROR #28: Okay.

16 THE COURT: And if you'll give me your number, I can  
17 give it back to the people who -- oh, you need to -- no. Take  
18 it downstairs to the Clerk's Office -- to the Jury  
19 Commissioner's Office, the clerks on the first floor --

20 JUROR #28: Okay.

21 THE COURT: -- where you give them your number there  
22 and tell them that I have discharged you, and if there's  
23 anything they need to give you or tell you, they can give it.

24 JUROR #28: I'm sorry I couldn't be more help.

25 THE COURT: Okay. Thank you.

1 JUROR #28: Thank you.

2 MR. JIMERSON: Thank you.

3 (Juror #28 left the bench conference.)

4 (Juror #24 joined the bench conference.)

5 THE COURT: Yes, ma'am, #24.

6 JUROR #24: You know, there was an incident with my  
7 uncle about a year and a half ago. Somebody robbed him and  
8 almost beat him to death with a pole, and he -- they were  
9 actually in his house. He lives in southern Cape Girardeau  
10 area, and they knew he had guns, and he had been robbed once,  
11 and they came back to rob him again, and they were beating him  
12 with a pole, and he actually got to his guns and shot them and  
13 saved his life, and they had to air flight him to St. Louis  
14 and everything, so . . .

15 THE COURT: Do you think that would affect your  
16 decision in this case?

17 JUROR #24: Not at all.

18 THE COURT: Okay.

19 JUROR #24: Not at all.

20 THE COURT: Does either counsel have any questions  
21 you'd like to ask?

22 MR. STEVENS: No.

23 MR. JIMERSON: No, Judge.

24 THE COURT: All right. Thank you very much for  
25 telling us that.

1 JUROR #24: All right.

2 (Juror #28 left the bench conference.)

3 (The following proceedings were held outside the hearing  
4 and presence of the jury panel.)

5 THE COURT: All right. So I have released for  
6 cause -- the fellow who was just here was #28, and I -- yeah,  
7 that was #28, and so I have released for cause #28 and then  
8 also Mr. -- that was Mr. Gray that we just discussed, and then  
9 Mr. Streicher, who we discussed earlier. Those two have been  
10 dismissed and are not on the panel. So then what I need to  
11 know is if either side has any other challenges for cause, and  
12 I'll ask Mr. Stevens first.

13 MR. STEVENS: None from the Government, Your Honor.

14 THE COURT: And Mr. Jimerson?

15 MR. JIMERSON: Yes, Your Honor. Thank you. We move  
16 for cause -- strike for cause Juror #30, Mr. Cole J.  
17 Waltermann. As the Court recalls the conversation with the --

18 THE COURT: Hold on a second. Are there any others  
19 besides Mr. Cole?

20 MR. JIMERSON: Juror #7.

21 THE COURT: Okay. And why don't you step up to the  
22 lectern, both of you, and we'll discuss both of them.

23 MR. JIMERSON: Yes, Judge.

24 THE COURT: All right. So Mr. Cole -- Cole  
25 Waltermann, Mr. Waltermann, #30, is the person who said he

1 worked in the emergency room.

2 MR. JIMERSON: Yes, ma'am.

3 THE COURT: And does the Government object to this  
4 strike for cause?

5 MR. STEVENS: I would, Judge. I asked him twice  
6 whether he could follow the Court's instructions, and he said  
7 that he would follow the Court's instructions.

8 THE COURT: Mr. Jimerson, your response.

9 MR. JIMERSON: Yes, Judge, but he -- that question  
10 was in fact asked, but then he also demonstrated an  
11 ambivalence about it, "Well, maybe. I don't know, you know."  
12 So to me, the certainty of being a juror is knowing what  
13 you're going to do and not necessarily what you might do, and  
14 I believe that's the question here. He admitted that, you  
15 know, he may keep thinking about his patients, and that's an  
16 honorable thing, but he's here with a certain function. If he  
17 can't commit solely to saying, "I will not do this," then I  
18 believe that's a disadvantage toward my client, and I believe  
19 he should be removed for cause.

20 THE COURT: Yeah, I think what he said was enough  
21 that he should be removed for cause. He -- he said -- he said  
22 it two different ways. When Mr. Stevens said, "Will you  
23 follow the Judge's instructions," he said, "Yes." When we  
24 said, "Are you able to -- do you think you can be fair given  
25 your history with all these victims of gun violence," he said,

1 "I'll do my best. I'll try. I don't -- it will be in my  
2 mind. I will be thinking about it." So I think it was enough  
3 that it showed a -- that he should be stricken for cause, so  
4 I'm going to grant the challenge for cause by the Defendant on  
5 #30, Mr. Waltermann.

6 Now, what's your reason on #7, Mr. Jimerson?

7 MR. JIMERSON: Thank you, Your Honor. It's really  
8 the question posed by Mr. Stevens to Juror #7, Mr. Russell  
9 Payne, and that was "Your opinion regarding felons, should  
10 they possess guns," and particularly, he's already -- he's  
11 given a conclusion already, you know, in terms of how he feels  
12 about it, and that, to me, leans him toward convicting him.  
13 Even prior to even hearing anything, he's already formed his  
14 opinion, and I believe -- well, I think I've said it.  
15 Basically, you know, he's already stated what his opinion is  
16 and what he's going to do.

17 THE COURT: Mr. Stevens, your response.

18 MR. STEVENS: No, Judge. I -- what I asked him  
19 was -- I asked him about the law and the charges and whether  
20 he basically was in agreement with what the law is, and he  
21 expressed that he was. I don't see that as a reason for a  
22 cause strike.

23 THE COURT: Yeah, I think it's an appropriate  
24 question in a -- in a gun case, and really, I think the  
25 Government wants to know if he's somebody who believes that

1 there shouldn't be any restrictions on people owning firearms  
2 because he did indicate that he was -- you know, had guns and  
3 was a member of the NRA. I don't believe that in any way he  
4 was saying he had prejudged the case. He was simply saying he  
5 was not going to disagree with the law. So I will overrule  
6 that challenge for cause.

7           So we need to pick a jury, and we have -- the jury  
8 panel -- hold on a second. Okay. Just running through it,  
9 the ones who have been removed for cause are numbers 28, 30,  
10 and 33. For the jury itself, you should exercise your strikes  
11 on numbers 1 through 29, excluding 28, of course, because that  
12 person's gone, and then for the alternates, the alternate pool  
13 is -- well, it would be -- do you all think there's any reason  
14 I should seat more than one alternate?

15           MR. STEVENS: The case is short, Judge. I think  
16 we're fine.

17           THE COURT: I think it's a short case and that should  
18 be fine, so the alternate pool is numbers 31, 32, and 34. So  
19 each side -- and numbers 30 -- I'll tell you what; I'm going  
20 to seat two alternates and use all of these jurors, so there  
21 will be -- each of you -- let's see. One, two, three. No, I  
22 can't do that. Let's see. That causes too much confusion.  
23 Never mind. We're going to seat one alternate, and so the  
24 alternate pool will be numbers -- did I say that right -- 31,  
25 32, and 34, and then numbers 35 and 36 are excess. Okay. And

1 then the Defendant has 10 strikes, and the Government has six.  
2 The Government needs to do its six first and then provide  
3 those strikes to Mr. Jimerson, and then, Mr. Jimerson, you can  
4 do your 10.

5 MR. JIMERSON: Yes, ma'am.

6 THE COURT: And I would appreciate your doing this  
7 expeditiously. I want to be able to -- you know, I don't  
8 know -- get -- we need to know when you're ready. So I have  
9 some people coming in here at 12:30. It's not a formal court  
10 proceeding. I'm just swearing in some officers. So I'll  
11 check on your status at 12:30, and if you haven't finished it  
12 by then, we'll send you to lunch, and then you can come back  
13 at 1:00 or whatever. Okay?

14 MR. JIMERSON: Yes, ma'am.

15 THE COURT: All right. So I'll be in recess while  
16 you do this.

17 (Court recessed from 11:58 a.m. until 12:32 p.m.)

18 (The following proceedings were held outside the hearing  
19 and presence of the jury panel.)

20 THE COURT: Mr. Stevens, do you have the list? Can  
21 you read to me what you've --

22 MR. STEVENS: Oh, I'm sorry, Your Honor.

23 THE COURT: -- the Government's strikes are?

24 MR. STEVENS: Yes.

25 THE COURT: Numbers?

1 MR. STEVENS: The Government strikes are 5, 11, 19,  
2 21, 23, 27.

3 THE COURT: And the Defendant's strikes?

4 MR. JIMERSON: I'm still writing the list, Your  
5 Honor, but I'll give them to you.

6 THE COURT: Okay.

7 MR. JIMERSON: #1, 3, 4, 6, 14, 18, 20, 26, 29, and  
8 the alternate strike it #32.

9 THE COURT: And -- and --

10 MR. STEVENS: #7.

11 MR. JIMERSON: #7. I'm sorry, Your Honor. #7.

12 THE COURT: Right. And the Government's alternate  
13 strike?

14 MR. STEVENS: #34, Judge.

15 THE COURT: Okay. So I show -- I'm going to read  
16 these into the record, and you all can tell me if I've got  
17 this right.

18 Juror #1 will be Lynne Blust. #2 will be Geralyn  
19 Rothery. #3 would be Tera Roberts. #4 would be Denise  
20 Schneider. #5 would be Stacie Prince. #6 would be Beth  
21 Deichmann. #7 would be Richard Hochecker. #8 would be Philip  
22 Councilor. #9 would be Lori Williams. #10 would be Paul  
23 Calotes. #11 would be Melinda Mitchell, and #12 would be  
24 Melissa Schieffer, and the alternate would be Ronicia Wesley  
25 Toney. Is that correct?



1 MR. STEVENS: Yes, Judge.

2 MR. JIMERSON: Did you miss #7? I didn't hear #7.

3 THE COURT: #7 is gone. Well, I was reading the ones  
4 that remain.

5 MR. JIMERSON: Okay. I got you.

6 THE COURT: So the ones that remain are the ones I  
7 just read.

8 MR. JIMERSON: I got you. I got you.

9 THE COURT: So, yeah, so were there -- are there any  
10 challenges to the Jury then as it will be empaneled?

11 MR. JIMERSON: Yes, ma'am, I have to.

12 THE COURT: Okay. Go ahead.

13 MR. JIMERSON: Your Honor, Defendant moves regarding  
14 challenges to the Jury based on United States versus -- *Batson*  
15 *versus Kentucky*. Particularly, there were -- as I looked over  
16 the jury venire, apparently, there was four African-Americans  
17 that were seated in the venire panel. The Government has  
18 exercised its strikes against two of those. Let me state  
19 this. Three were possibly able to be seated in the area -- in  
20 the panel. One was the alternate, and she was not in the  
21 position to be seated based on this. Out of the three, two of  
22 the strikes were used by the Government to flag  
23 African-American potential jury members, particularly, Mrs. --  
24 Juror #5, Antonio Seviere, and Juror #21, Lynnette McMorris.  
25 Your Honor, we believe that -- that the effect of striking

1 those jurors has a racial effect, discriminatory effect,  
2 particularly in respect to my client's rights, Mr. Daryl  
3 Warren. The -- I heard nothing from the Government regarding  
4 anything that would necessarily disqualify them or -- in fact,  
5 the Court even asked questions regarding -- where there was  
6 lack of information regarding them, and they answered all very  
7 positive or similarly situated to other jurors sitting in this  
8 venire panel, and as a result, Judge, I believe that the only  
9 effect that it could have is one of discrimination against  
10 Mr. -- Mr. Stevens -- I mean Mr. Warren, my client.

11 THE COURT: All right. Well, let me just state first  
12 for the record, based on my own observations, it appears to me  
13 that the following panel members were African-American. This  
14 is what I believed was correct. #5, Mr. Seviere. #9 -- these  
15 are the panel numbers -- Tera Roberts. #21, Lynnette  
16 McMorris. And #31, Ronicia Wesley Toney, and she is going to  
17 be the alternate. So of the -- the three, you are challenging  
18 the Government strikes on #5, which was Mr. Seviere, and # --  
19 what was the panel number -- 21, Ms. McMorris.

20 MR. JIMERSON: Yes.

21 THE COURT: So, Mr. Stevens, will you respond to the  
22 Defendant's motion?

23 MR. STEVENS: Certainly, Judge. Our reason for  
24 striking those two jurors is pretty simple. They were the  
25 only two jurors on the entire panel that did not answer any of

1 the general questions. All I know about them is what's on the  
2 questionnaire. I will point out the Court, when it came back  
3 to ask about employment, did direct direct questions to them;  
4 however, that's simply information that should have been on  
5 the questionnaire to begin with, but they did not answer --  
6 they were the only two panel members who did not answer a  
7 single general question of any kind. This is a relatively  
8 talkative panel, but they -- they didn't answer one question.  
9 All I know about them is basically what is on the -- on the  
10 questionnaire.

11 THE COURT: Any -- any response, Mr. Jimerson?

12 MR. JIMERSON: Your Honor, I believe the nature of a  
13 lot of people's responses was pretty limited, particularly, if  
14 you look at Mrs. Beth -- Juror #13, Beth A. Deichmann or  
15 Deichmann. Basically, she only answered one thing, and I  
16 believe it was that her nephew -- Webster Groves -- maybe a  
17 police officer. There were other people who just answered  
18 maybe just one question, one question at all. So it appears  
19 that -- you know, that the question -- I mean the answers  
20 provided by the Government are just in fact pretextual for the  
21 basis of striking those jurors as I mentioned earlier.

22 THE COURT: All right. Well, I don't find that  
23 there's been any pretext or any discrimination here. The  
24 Government is correct that these were the only two jurors who  
25 did not answer any questions. They're also the only two that

1 didn't fill out any employment information on the form. Now,  
2 they both said they're not currently employed, but -- so  
3 they -- but they didn't list a prior employer either, although  
4 when I asked them, of course, they did, and that's not  
5 saying -- the fact they didn't fill it out is not here nor  
6 there, but there was no information about them, and that by  
7 itself is sufficient nonracial reason, nondiscriminatory  
8 reason for the strike, and you did point out #13,  
9 Ms. Deichmann. In fact, I think you are correct that she only  
10 answered the one question, but she did answer that question.  
11 She also provided information about, you know, her -- her jobs  
12 and everything that was already on the form, so I don't think  
13 there's been any discrimination shown, and I'll overrule the  
14 *Batson* challenge, and the Jury will be seated as I just  
15 stated.

16 MR. JIMERSON: Yes, Your Honor. Thank you, Your  
17 Honor.

18 THE COURT: All right. And so the case is in recess  
19 until 1:15.

20 MR. STEVENS: Thank you, Judge.

21 MS. BEHRENS: Thank you, Judge.

22 (Court recessed from 12:40 p.m. until 1:21 p.m.)

23 (The following proceedings were held outside the hearing  
24 and presence of the jury panel.)

25 MR. STEVENS: Judge, I anticipate with the first

1 witness, at some point, I'll want to use the paper on the  
2 easel. We're going to have quite a bit of video going on the  
3 screens and things. I'm going to show him some phone records  
4 where we'll establish several phone numbers that I'd like to  
5 just write up there for future reference. Do you mind if I  
6 pull that over to use that?

7 THE COURT: No. Just make sure you don't block the  
8 jurors' view of anything, and that's fine, and I want to  
9 remind you, too, to stand at the lectern and use the -- use  
10 the microphone, and if you all want to use this one to address  
11 the Jury during your opening statements, you can do that.  
12 That's why it's there, but what you have to do is pick the  
13 mike up and move it over so that -- you know, so that it's --  
14 because that mike that's on it is not live.

15 MR. JIMERSON: Yes, ma'am. I'll be using this one,  
16 Your Honor.

17 THE COURT: Okay. All right. You may bring in the  
18 jury.

19 (The following proceedings were held within the hearing  
20 and presence of the jury panel.)

21 THE COURT: All right. Good afternoon. Thanks for  
22 being back here, and we are now ready to seat the persons who  
23 have been selected as jurors, and so as your name is called,  
24 would you please step forward and be seated where indicated by  
25 the clerk?

1 (Jury seated.)

2 THE COURT: All right. The next step is that the  
3 persons who have been selected to serve on the Jury will now  
4 be administered another oath for faithful performance of your  
5 duties as jurors. So would you all please stand and raise  
6 your right hands?

7 (Jury sworn.)

8 THE COURT: You may be seated.

9 Now, to those of you who were not selected to serve  
10 on this Jury, I want to thank you for your service in this  
11 case. It's essential that we have a large pool of qualified  
12 individuals such as yourselves from whom to pick a jury in  
13 every case, and we do really appreciate your being here and  
14 appreciate, like I said, your being here yesterday as well.  
15 So you are discharged in this case at this time.

16 Do they need to go --

17 THE CLERK: They're finished.

18 THE COURT: Okay. And so you do not need to report  
19 back downstairs. If you'll give your numbers to the clerk at  
20 the back of the courtroom, she'll get those down to the jury  
21 clerks. If you are needed again for jury service, you will be  
22 notified by the jury clerks, and I don't know if you will or  
23 not, but you could be called again, and -- but I do want to  
24 thank you very much for your service. I hope you all  
25 understand that, you know, our system of justice could not

1 function if it weren't for citizens such as you willing to  
2 serve, so I appreciate your being here and going through this  
3 process. Yes, sir.

4 JUROR: How will we know if we're picked as an  
5 alternate?

6 THE COURT: Well, you're not picked at all. You  
7 would be up here if you were. There is an alternate here.  
8 It's actually the one we called 13, but she's really -- we  
9 tell her to forget about that. So you're not -- you're  
10 completely discharged in this case, so you are done.

11 Okay. Yes, ma'am.

12 JUROR: So we don't need to log online and see if we  
13 have to serve out the rest of our like -- is it two weeks?

14 THE COURT: No, you don't.

15 JUROR: Okay.

16 THE COURT: But you'll be contacted however you were  
17 contacted to come in this time. I can't remember how they --  
18 how did you know to --

19 JUROR: Online.

20 THE COURT: How are they called in the first place?  
21 Aren't they mailed?

22 JUROR: You get a letter the first time.

23 THE COURT: You get a summons, right, and that  
24 summons then tells you to log in, so I think you'd be -- you  
25 don't have to keep logging in. Someone will contact you is

1 the main thing. You don't have to keep checking every day  
2 because this week there's no more need for you, so you don't  
3 have to keep checking every day, but they'll contact you one  
4 way or another. Okay. Thank you, all.

5 (Remaining jury panel left the courtroom.)

6 THE COURT: All right. Members of the Jury, I'm  
7 going to take a few moments now to give you some initial  
8 instructions about this case and about your duties as jurors.  
9 At the end of the trial, I will give you further instructions,  
10 and I may also give you instructions during the trial. Unless  
11 I specifically tell you otherwise, all of the instructions,  
12 both those I give you now and those I give you later, are  
13 equally binding on you and must be followed.

14 This is a criminal case brought by the Defendant  
15 against the United States Government. The Defendant is  
16 charged with conspiracy to distribute cocaine, possessing a  
17 firearm in furtherance of a drug trafficking crime, and being  
18 a felon in possession of a firearm. Those three charges are  
19 set forth in what is called an indictment, which reads as  
20 follows:

21 The first charge is, beginning at a time unknown to  
22 the Grand Jury but up to and including June 5th, 2013, in the  
23 city of St. Louis, within the Eastern District of Missouri,  
24 Daryl Warren and others, acting together and with others known  
25 and unknown to the Grand Jury, did knowingly and willfully



1     conspire, combine, confederate, and agree to commit an offense  
2     against the United States, to wit, to distribute and possess  
3     with intent to distribute in excess of five kilograms of a  
4     mixture or substance containing a detectable amount of  
5     cocaine, a Schedule II narcotic controlled substance drug, in  
6     violation of Title 21 United States Code § 841(a)(1) and 846  
7     and punishable under Title 21 United States Code §  
8     841(b)(1)(a)(ii).

9             The second charge is that on or about June the 5th of  
10    2013, in the city of St. Louis, within the Eastern District of  
11    Missouri, Daryl Warren, acting with others known and unknown  
12    to the Grand Jury, did knowingly possess a firearm in  
13    furtherance of a drug trafficking crime, which may be  
14    prosecuted in a court of the United States, specifically,  
15    conspiracy to distribute in excess of five kilograms of  
16    cocaine as charged in the previous charge, in violation of  
17    Title 18 United States Code § 924(c)(1)(2).

18            And the third charge is that on or about June 5th,  
19    2013, in the city of St. Louis, within the Eastern District of  
20    Missouri, Daryl Warren, the Defendant herein, had been  
21    previously convicted of a felony crime punishable by a term of  
22    imprisonment exceeding one year, did knowingly possess a  
23    firearm, which traveled in interstate or foreign commerce  
24    during or prior to being in the Defendant's possession, in  
25    violation of Title 18 United States Code § 922(g)(1).

1           You should understand that an indictment is simply an  
2       accusation; it is not evidence of anything. The Defendant has  
3       pleaded not guilty and is presumed to be innocent unless and  
4       until proved guilty beyond a reasonable doubt. It will be  
5       your duty to decide from the evidence whether the Defendant is  
6       guilty or not guilty of the crime charged. From the evidence,  
7       you will decide what the facts are. You are entitled to  
8       consider that evidence in the light of your own observations  
9       and experiences in the affairs of life. You may use reason  
10      and common sense to draw deductions or conclusions from facts  
11      which have been established by the evidence. You will then  
12      apply those facts to the law which I give you in these and my  
13      other instructions, and in that way, you will reach your  
14      verdict. You are the sole judges of the facts, but you must  
15      follow my instructions whether you agree with them or not.  
16      You have taken an oath to do so.

17           Do not allow sympathy or prejudice to influence you.  
18      The law demands of you a just verdict, unaffected by anything  
19      except the evidence, your common sense, and the law as I give  
20      it to you. You should not take anything I may say or do  
21      during the trial as indicating what I think of the evidence or  
22      what I think your verdict should be.

23           Finally, please remember that only this Defendant,  
24      not anyone else, is on trial here and that this Defendant is  
25      on trial only for the crime charged, not for anything else.

1 I have mentioned the word "evidence". Evidence  
2 includes the testimony of witnesses, documents and other  
3 things received as exhibits, and any facts that have been  
4 stipulated, that is, formally agreed to by the parties, and  
5 any facts that have been judicially noticed, that is, facts  
6 that I tell you you may but are not required to accept as true  
7 even without evidence.

8 Certain things are not evidence, and I will list  
9 those things for you now.

10 One, statements, arguments, questions, and comments  
11 by the lawyers representing the parties in this case are not  
12 evidence.

13 Two, objections are not evidence. Lawyers have a  
14 right to object when they believe something is improper. You  
15 should not be influenced by the objection. If I sustain an  
16 objection to a question, you must ignore the question and must  
17 not try to guess what the answer might have been.

18 Three, testimony that I strike from the record or  
19 tell you to disregard is not evidence and must not be  
20 considered.

21 Four, anything you see or hear about this case  
22 outside the courtroom is not evidence unless I specifically  
23 tell you otherwise during the trial.

24 Furthermore, a particular item of evidence is  
25 sometimes received for a limited purpose only. That is it can

1 be used by you only for one particular purpose and not for any  
2 other purpose. I will tell you if that occurs and instruct  
3 you on the purposes for which the item can and cannot be used.

4 Now, some of you may have heard the terms "direct  
5 evidence" and "circumstantial evidence". You're instructed  
6 that you should not be concerned with those terms. The law  
7 makes no distinction between direct and circumstantial  
8 evidence. You should give all evidence the weight and value  
9 you believe it is entitled to receive.

10 In deciding what the facts are, you may have to  
11 decide what testimony you believe and what testimony you do  
12 not believe. You may believe all of what a witness said or  
13 only part of it or none of it. In deciding what testimony to  
14 believe, you may consider the witness' intelligence, the  
15 opportunity the witness had to have seen or heard the things  
16 testified about, the witness' memory, any motives that witness  
17 may have for testifying a certain way, the manner of the  
18 witness while testifying, whether that witness said something  
19 different at an earlier time, the general reasonableness of  
20 the testimony, and the extent to which the testimony is  
21 consistent with any evidence that you believe.

22 During the trial, I'm sure it will be necessary for  
23 me to talk with the lawyers outside the hearing of the Jury,  
24 and we do that either by having a bench conference over here  
25 while you are present in the courtroom or by calling a recess.

1 Please understand that while you are waiting we are working.  
2 The purpose of these conferences is to decide how certain  
3 evidence is to be treated under the Rules of Evidence and to  
4 avoid confusion and error. We will, of course, do what we can  
5 to keep the number and length of these conferences to a  
6 minimum.

7 Now, to ensure fairness, you as jurors must obey the  
8 following rules.

9 First, do not talk among yourselves about this case  
10 or about anyone involved with it until the end of the case  
11 when you go to the jury room to decide on your verdict.

12 Second, do not talk with anyone else about this case  
13 or about anyone involved with it until the trial has ended and  
14 you have been discharged as jurors.

15 Third, when you are outside the courtroom, do not let  
16 anyone tell you anything about the case or about anyone  
17 involved with it until the trial has ended and your verdict  
18 has been accepted by me. If someone should try to talk to you  
19 about the case during the trial, please report it to me.

20 Fourth, during the trial, you should not talk with or  
21 speak to any of the parties, lawyers, or witnesses involved in  
22 the case. You should not even pass the time of day with any  
23 of them. It is important not only that you do justice in this  
24 case but that you also give the appearance of doing justice.  
25 If a person from one side of the lawsuit should see you

1 talking to a person from the other side, even if it were  
2 simply to pass the time of day, an unwarranted and unnecessary  
3 suspicion about your fairness might be aroused. If any  
4 lawyer, party, or witness does not speak to you when you pass  
5 in the hall or ride in the elevator or the like, please  
6 understand they are not being rude; it is because they are not  
7 supposed to talk to or visit with you either.

8 Fifth, it may be necessary for you to tell your  
9 family, friends, coworkers, or employer about your  
10 participation in the trial. You can explain to them when you  
11 are required to be in court and can warn them not to ask you  
12 about this case or tell you anything they know or think they  
13 know about the case or discuss it in your presence. You must  
14 not communicate with anyone or post information about the  
15 parties, witnesses, participants, charges, evidence, or  
16 anything else related to this case. You must not tell anyone  
17 anything about the Jury's deliberations in the case until I  
18 have accepted your verdict or until I give you specific  
19 permission to do so. If you discuss the case with someone  
20 other than the jurors, other jurors during deliberations, it  
21 could create the perception that you have already decided the  
22 case or that you may be influenced in your verdict by their  
23 opinions. That would not be fair to the parties, and it may  
24 result in the verdict being thrown out and the case having to  
25 be retried. During the trial, while you are in the courthouse

1 and after you leave for the day, do not provide any  
2 information to anyone by any means about this case. Thus, for  
3 example, do not talk face-to-face or use any electronic device  
4 or media, such as the telephone, a cell or smartphone,  
5 BlackBerry, PDA, computer, the Internet, any Internet service,  
6 any text or instant messaging service or any Internet  
7 chatroom, blog, or website such as Facebook, YouTube, Twitter,  
8 or any other way to communicate with anyone any information  
9 about this case until I accept your verdict.

10 Sixth, do not do any research on the Internet, in  
11 libraries, in the newspapers, or in any other way or make any  
12 investigation about this case on your own. Do not visit or  
13 view any place discussed in the case, and do not use Internet  
14 programs or other devices to search for or to view any place  
15 discussed in the testimony. Also, do not do research of any  
16 information about the case, the law, or the people involved,  
17 including the parties, the witnesses, the lawyers, or the  
18 judge.

19 Seventh, do not read any news stories or articles in  
20 print or on the Internet or in any blog about the case or  
21 about anyone involved with it or listen to any radio or  
22 television reports about the case or about anyone involved  
23 with it. In fact, until -- let's see. I do not know whether  
24 there might be any newspaper reports of this case or other  
25 news reports, but if there are, please do not listen, read any

1 newspapers, or listen to any news reports about this case. I  
2 can assure you that by the time you have heard the evidence in  
3 this case you will know what you need to know to return a just  
4 verdict. The parties have a right to have the case decided  
5 only on evidence they know about and that has been introduced  
6 here in court. If you do some research or investigation or  
7 experiment that we don't know about, then your verdict may be  
8 influenced by inaccurate, incomplete, or misleading  
9 information that has not been tested by the trial process,  
10 including the oath to tell the truth and by cross-examination.  
11 All of the parties are entitled to a fair trial rendered by an  
12 impartial jury, and you must conduct yourselves so as to  
13 maintain the integrity of the trial process. If you decide a  
14 case based on information not presented in court, you will  
15 have denied the parties a fair trial in accordance with the  
16 rules of this country and you will have done an injustice. It  
17 is very important that you abide by these rules. Remember,  
18 you have taken an oath to abide by these rules, and you must  
19 do so. Failure to follow these instructions may result in the  
20 case having to be retried and could result in your being held  
21 in contempt.

22 Now, the trial will proceed in the following manner.  
23 First, the Government attorney will make an opening statement.  
24 Next, the Defendant's attorney may but does not have to make  
25 an opening statement. An opening statement is not evidence



1 but is simply a summary of what the attorney expects the  
2 evidence to be. The Government will then present its  
3 evidence, and counsel for the Defendant may cross-examine.  
4 Following the Government's case, the Defendant may but does  
5 not have to present evidence, testify, or call other  
6 witnesses. If the Defendant calls witnesses, the Government  
7 counsel may cross-examine them. After presentation of the  
8 evidence is completed, the attorneys will make their closing  
9 arguments to summarize and interpret the evidence for you. As  
10 with opening statements, closing arguments are not evidence.  
11 I will then further instruct you on the law, and after that,  
12 you will retire to deliberate on your verdict.

13 So at this time, we are ready for the opening  
14 statements of the attorneys. Mr. Stevens, you may proceed.

15 MR. STEVENS: Thank you, Your Honor.

16 (Opening statements excerpted.)

17 THE COURT: Mr. Stevens, you may proceed.

18 MR. STEVENS: Thank you, Judge. The Government calls  
19 Agent Richie Zayas to the stand.

20 THE COURT: And any other witnesses in the courtroom  
21 need to be excused at this time if there are any.

22 MR. STEVENS: Judge, may I approach briefly here?

23 THE COURT: Yeah.

24 (A bench conference was held on the record and outside of  
25 the hearing of the Jury as follows:)

1 MR. STEVENS: I expect to play transcripts with the  
2 video, and I just wanted to --

3 THE COURT: Say it again. She couldn't hear you.

4 MR. STEVENS: I'm sorry. I expect to play  
5 transcripts with the video, so I'm just handing you the  
6 standard instruction.

7 THE COURT: Oh, okay. And you want me to give this  
8 when he gets ready?

9 MR. STEVENS: Yes.

10 THE COURT: Tell me when you're ready.

11 MR. STEVENS: Yes, I will.

12 THE COURT: Okay.

13 MR. JIMERSON: No objection to it, and --

14 THE COURT: Okay. And so none of these people are  
15 witnesses who are in the courtroom?

16 MR. STEVENS: That's correct.

17 MR. JIMERSON: Not for us.

18 THE COURT: Okay. All right.

19 MR. STEVENS: Thank you, Judge.

20 (The following proceedings were held within the hearing  
21 of the Jury.)

22 MR. STEVENS: May I proceed, Your Honor?

23 THE COURT: You may.

24 MR. STEVENS: Thank you.

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**RICHARD ZAYAS,**

HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS  
FOLLOWS:

DIRECT EXAMINATION

BY MR. STEVENS:

Q Will you state your name again for the Jury, please?

A Richard Zayas.

Q And what is your occupation, sir?

A Special Agent with the Department of Justice, Bureau of  
Alcohol, Tobacco, Firearms and Explosives.

Q How long have you been with ATF?

A Over 25 years.

Q And let's talk a little bit about your background and  
experience. Where did you start your career as an ATF agent?

A In 1989, in Miami, Florida.

Q And where did you receive your initial training to become  
an ATF agent?

A In Brunswick, Georgia.

Q All right. And what sort of training did you undergo  
there?

A There's an initial basic school, which is nine weeks,  
which teaches you basic law enforcement, and then there's a  
subsequent nine weeks, which you get into specific ATF laws  
and how we do the job.

Q Did you later receive -- receive specialized training as

1 an ATF agent?

2 A Yes, sir.

3 Q And, specifically, were you a member of a Special  
4 Response Team?

5 A Yes, sir.

6 Q And what is a Special Response Team?

7 A A Special Response Team is a group of agents they bring  
8 together, basically, a SWAT team, which we're involved in  
9 high-risk arrest warrants and search warrants.

10 Q All right. And how long did you do that?

11 A Five and a half years.

12 Q Did you receive training in undercover operations?

13 A Yes, sir, I did.

14 Q And what is your current assignment?

15 A I'm currently assigned to the Special Operations Division  
16 in Washington, DC, and I'm involved in undercover operations  
17 throughout the United States and its properties.

18 Q How long have you worked as an undercover agent?

19 MR. JIMERSON: Objection, Your Honor. May we  
20 approach?

21 THE COURT: You may.

22 (A bench conference was held on the record and outside of  
23 the hearing of the Jury as follows:)

24 MR. JIMERSON: Your Honor, I believe this is getting  
25 dangerously close, if not already, to the -- to the ruling

1 that you made regarding his qualifications. This man is not  
2 being used as an expert, yet we're getting so much into his  
3 qualifications, his years of experience and those things,  
4 particularly, his working 20 plus years and those things. I'm  
5 afraid that basically what he's done is establish this  
6 witness' reliability based on something that we had talked  
7 about earlier.

8 THE COURT: Okay. Well, I don't think he's done that  
9 at all. This is what I said he could do, the basic normal  
10 stuff, so overruled.

11 MR. STEVENS: Judge, if I could, while I'm here,  
12 after I go through his experience, I intend to ask him what  
13 the primary focus of his undercover work is now, and that  
14 would be home invasion robbery investigations. Do you have a  
15 problem with that?

16 THE COURT: Yeah.

17 MR. STEVENS: You do? Okay.

18 THE COURT: I think that's covered by my --

19 MR. STEVENS: Okay. That's all I wanted to ask.

20 THE COURT: -- by what I told you. Okay.

21 MR. STEVENS: All right.

22 (The following proceedings were held within the hearing  
23 of the Jury.)

24 Q (By Mr. Stevens) I think I'd asked you how long you'd  
25 been a undercover agent with ATF.

1 A Yes, sir.

2 Q And how long have you been?

3 A Twenty-four of the 25 years.

4 Q As part of your experience as an undercover agent, have  
5 you had an occasion to infiltrate criminal organizations?

6 A Yes, sir, I have.

7 Q What sort of organizations?

8 A I worked a year and a half undercover in the Washington,  
9 DC, area on a gang by the name of MS13, and then I worked  
10 three years undercover in northern California on a prison  
11 street gang known as the Nortenos.

12 Q And those are just a few examples?

13 A Yes, sir.

14 Q Have you been involved in the undercover purchase of  
15 illegal drugs over the course of your career as an undercover  
16 agent?

17 A Yes, sir, I have.

18 Q Have you trained other agents to make those kinds of  
19 purchases?

20 A Yes, sir, I have.

21 Q Do your undercover operations sometimes include what are  
22 called confidential informants?

23 A Yes, sir.

24 Q And those are commonly referred to as CIs?

25 A Yes, sir.

1 Q All right. Those are individuals who are not agents but  
2 who are working with you in these operations at times?

3 A That's correct.

4 Q Now, you were in St. Louis last summer as part of an  
5 operation here, is that right?

6 A Yes, sir, from April to June.

7 Q All right. And did that involve home invasion robbery  
8 investigations?

9 A Yes, sir.

10 Q Can you explain to the Jury what we mean by a home  
11 invasion robbery?

12 A Home invasion is where an individual or group of  
13 individuals come together by means of force to enter either a  
14 permanent structure or nonpermanent structure to steal some  
15 property.

16 Q All right. And what -- what sort of operation was this  
17 you were involved in last summer?

18 A It was known as Operation Gideon, and our purpose was to  
19 combat violent crime here in the St. Louis area.

20 Q How long did that operation go on?

21 A From April to June of 2013.

22 Q So about four months?

23 A Yes, sir.

24 Q All right. And as part of that operation, you were doing  
25 home invasion robbery investigations?

1 A Yes, sir.

2 Q All right. Now, as part of a home invasion robbery  
3 investigation, did you meet the Defendant Daryl Warren?

4 A Yes, sir, I did.

5 MR. STEVENS: Let me show you, if I could, Agent  
6 Zayas, what I will mark as Government's Exhibit 1.

7 May I approach, Judge?

8 THE COURT: You may. Is there any objection to this  
9 exhibit?

10 MR. JIMERSON: No, Your Honor.

11 THE COURT: All right.

12 MR. STEVENS: And for the record, Judge, I have  
13 previously disclosed it to defense counsel.

14 THE COURT: Right. Okay. So Exhibit 1 is received  
15 into evidence.

16 MR. STEVENS: Thank you, Judge.

17 Q (By Mr. Stevens) In that case, I'll stand here, Agent  
18 Zayas. You indicated you met Daryl Warren?

19 A Yes, sir.

20 Q Do you see him here on Government's Exhibit 1?

21 A Yes, sir.

22 Q And where is he?

23 A He's to the left of the board, wearing the white T-shirt.

24 Q All right. Did you have occasion during this  
25 investigation to meet the other two individuals here?



1 A Yes, sir, I did.

2 Q And who are they?

3 A Robert Washington in the middle and Michael Twitty on the  
4 right.

5 Q All right. Thank you, sir. So you indicated you met  
6 Daryl Warren in the course of this home invasion robbery  
7 investigation?

8 A Yes, sir.

9 Q How did you meet Mr. Warren?

10 A Through Washington.

11 Q All right. And that would be Robert Washington pictured  
12 in Exhibit 1?

13 A Yes, sir, in the middle.

14 Q Did he introduce you to Mr. Warren?

15 A Yes, sir, he did.

16 Q All right. Did you go out looking for Mr. Warren, or did  
17 Mr. Washington bring him to you?

18 A I was introduced to the Defendant Warren through  
19 Washington.

20 Q All right. Now, how did you come -- how did you meet  
21 Robert Washington?

22 A Through two confidential informants.

23 Q All right. And did you conduct a undercover cocaine  
24 investigation regarding Mr. Washington?

25 A That is correct.

1 Q Regarding that cocaine investigation, did you meet with  
2 Mr. Washington on several occasions?

3 A Yes, sir.

4 Q And when was that?

5 A That was on May the 21st, May the 23rd, and May the 29th,  
6 2013.

7 Q At that May 29th meeting with Robert Washington, did your  
8 investigation change at that point?

9 A I wouldn't say necessarily changed, but its focus -- one  
10 of the focuses was on home invasion investigations.

11 Q All right. And at that point did the investigation then  
12 expand to this home invasion investigation?

13 A Yes, sir, that's correct.

14 Q Up until that time, it was an undercover cocaine  
15 investigation?

16 A Yes, sir.

17 Q All right. And you say that Robert Washington introduced  
18 Daryl Warren to you?

19 A That is correct.

20 Q When was that?

21 A That was on June the 3rd, year 2013, in St. Louis.

22 Q All right. And was Mr. Warren introduced to you as  
23 someone who could do one of these home invasion robberies?

24 A Yes, sir.

25 Q That June 3rd meeting in which you met Daryl Warren, in

1 which Robert Washington introduced you to Daryl Warren -- was  
2 that audio and video recorded?

3 A Yes, sir.

4 Q And was that meeting not only recorded but later meetings  
5 with Daryl Warren?

6 A Yes, sir.

7 Q All right. And I'd like to ask you, Agent Zayas, were  
8 you familiar with the recording equipment that was used in  
9 connection with this investigation?

10 A Yes, sir.

11 Q Was that in normal operating condition at the time you  
12 used it?

13 A Yes, it was.

14 Q And did it accurately record sounds and images?

15 A Yes, it did.

16 Q Were you experienced and qualified to use that recording  
17 equipment?

18 A Yes, I am.

19 Q And were you actually present personally at each of these  
20 meetings?

21 A Yes, sir.

22 Q You personally met with Daryl Warren on each of these  
23 dates?

24 A Yes, I did.

25 Q After the video -- each video was recorded, did you

1 review each of those videos?

2 A Yes, sir, I did.

3 Q And were they accurate recordings of the meetings that  
4 you attended?

5 A Yes, sir.

6 Q Now, you're aware that portions of those videos have been  
7 downloaded to compact disc for purposes of trial here?

8 A Yes, I have.

9 Q All right. Agent Zayas, I'll show you what have been  
10 marked as Government's Exhibits 5, 6, and 7, previously  
11 disclosed to defense counsel. Do you recognize 5, 6, and 7?

12 A Yes, I do.

13 Q And what are they?

14 A They're the -- they're the videos and the audios of those  
15 individual meetings. Also, they're snippets of those  
16 meetings.

17 Q All right. And so these are excerpts or portions of  
18 those meetings, is that right?

19 A That's correct.

20 Q All right. Is it your understanding that there are  
21 several hours of video in this case?

22 A Yes, sir.

23 Q You understand we're not planning to play all of that?

24 A Yes, sir.

25 Q All right. Can you give context to these videos

1 nonetheless?

2 A Yes, I can.

3 Q All right. And so you recognize these as excerpts of  
4 videos from June 3rd, 4th, and 5th?

5 A That's correct.

6 MR. STEVENS: I would offer Government's Exhibits 5,  
7 6, and 7 at this time, Your Honor.

8 THE COURT: 5, 6, and 7 are received into evidence,  
9 and, you know, I -- I -- I don't know what's wrong with me  
10 today. I made another mistake. When I was instructing the  
11 Jury, I omitted one of the instructions I usually give you,  
12 and I'm going to do it now because I looked over and noticed  
13 your notebooks there, and you are -- at the end of the trial,  
14 you'll be required to make your decision based on what you  
15 recall of the evidence, and you won't have a written  
16 transcript to consult, and it's not practical for the court  
17 reporter to read back testimony, so you must pay close  
18 attention to the testimony as it is given. If you wish,  
19 however, you may take notes to help you remember what the  
20 witnesses said, and if you do take notes, please keep them to  
21 yourself until you and your fellow jurors go to the jury room  
22 to decide the case. Please make sure that you don't let note  
23 taking distract you, so that you're not listening to other  
24 answers by the witnesses. When you leave at night, your notes  
25 will be secured and will not be read by anyone, and I usually

1 tell you this, and I forgot, but that's why you've got those  
2 notebooks there. You shouldn't feel like you have to take  
3 notes, but if you want to, you may do so.

4 All right. Sorry to interrupt. Go ahead.

5 MR. STEVENS: Thank you, Judge.

6 Q (By Mr. Stevens) All right. Agent Zayas, so you  
7 recognize 5, 6, and 7; you've recently watched these?

8 A Yes, sir.

9 Q And they're accurate depictions of the meetings that you  
10 engaged in on those dates, June 3rd, 4th, and 5th?

11 A Yes.

12 Q Are you aware that this same video has been downloaded to  
13 a laptop to be played here for courtroom presentation?

14 A Yes, sir.

15 Q You've reviewed that as well?

16 A Yes, sir.

17 Q And is that an accurate copy of the videos regarding your  
18 meetings?

19 A Yes, sir.

20 Q All right. Now, you also assisted in preparing  
21 transcripts of those, the conversations on those videos, is  
22 that right?

23 A That's correct.

24 Q And those were also placed on the laptop for courtroom  
25 presentation?

1 A Yes, sir.

2 Q Are those transcripts accurate?

3 A Yes, sir.

4 Q In addition to providing some context to these videos,  
5 can you also identify the individuals that appear on the  
6 videos at the meetings you attended?

7 A Yes, sir.

8 Q All right. Now I want to direct your attention -- you'd  
9 mentioned that you met Daryl Warren on June 3rd of 2013. I'd  
10 like to direct your attention to that date if I might. Who  
11 else attended that meeting?

12 A It was -- well, initially, it was myself, another ATF  
13 Special Agent Lisa Jordan, J-O-R-D-A-N, the two confidential  
14 informants, and Robert Washington initially.

15 Q All right. So, initially, you met with Robert Washington  
16 there?

17 A That is correct.

18 Q And where did you meet?

19 A We went in the parking lot at 3400 block of South  
20 Jefferson.

21 Q All right. At this time, Agent Zayas, I'd like to show  
22 you what I've marked as Government's Exhibit 8. Do you  
23 recognize Government's 8?

24 A Yes, sir, I do.

25 Q Do you see the location there where you met with Robert

1 Washington on June 3rd of 2013?

2 A Yes, sir.

3 Q All right. And is that indicated by 3451 South  
4 Jefferson?

5 A That is correct.

6 Q All right. And this also shows dates of other meetings  
7 as well, is that right?

8 A That is correct.

9 Q Is this map an accurate depiction of south St. Louis city  
10 and the locations in which you met in the course of this case?

11 A Yes, sir.

12 MR. STEVENS: I would offer Government's Exhibit 8 at  
13 this time, Your Honor.

14 MR. JIMERSON: No objection.

15 THE COURT: All right. Government's Exhibit 8 is  
16 received into evidence, and you can show it to the Jury.

17 MR. STEVENS: Thank you, Judge.

18 Q (By Mr. Stevens) All right. Now, Agent Zayas, you  
19 identified the 3400 block of South Jefferson as where you met  
20 on June 3rd, 2013?

21 A Yes, sir.

22 Q All right. Now, you've mentioned already that you also  
23 had several meetings with Robert Washington prior to this.  
24 Where did those occur?

25 A They occurred at the 2800 block of Ohio twice --



1 actually, no -- once and also down at -- at the 4100 block of  
2 Gravois.

3 Q That was on May 29th?

4 A Yes, sir, that's correct.

5 Q The occasion in which the investigation expanded to home  
6 invasion robberies?

7 A That is correct.

8 Q And you mentioned regarding the 2800 block of Ohio. You  
9 personally met with Robert Washington there one time, is that  
10 right?

11 A That is correct.

12 Q Previous to that, did someone else meet with him there?

13 A Yes, sir.

14 Q And who was that?

15 A The two confidential informants.

16 Q All right. This was in the course of your cocaine  
17 investigation?

18 A That is correct.

19 Q All right. Thank you. When you initially met with  
20 Robert Washington there, what was the purpose of meeting with  
21 him?

22 A The purpose was to determine whether or not Washington  
23 was involved -- or excuse me. Can you repeat the question?

24 Q Yes. With meeting with Robert Washington there on  
25 June 3rd of 2013, what was the purposes of meeting with him

1 there?

2 A The purpose was for Washington to introduce me to the  
3 individuals that were going to be involved in the home  
4 invasion robbery.

5 Q All right. And so you expected other individuals to  
6 arrive?

7 A That is correct.

8 Q Before that time, did you have any idea who that would  
9 be?

10 A No, sir.

11 Q Again, you didn't go seek out Daryl Warren, is that  
12 right?

13 A That is correct.

14 Q All right. And did Mr. Washington, as you determined, in  
15 fact arrange for two other individuals to meet you there?

16 A Yes, sir.

17 Q And who were they?

18 A That was the Defendant Warren and an individual by the  
19 last name of Twitty.

20 Q All right. And those are the individuals here on  
21 Government's Exhibit 1?

22 A That is correct.

23 Q And so on June 3rd of 2013 we have all three of these  
24 individuals meeting with you at 3451 South Jefferson?

25 A That is correct.

1 Q What kind of a lot is that? What is that there?

2 A It's a business parking lot. I believe there is a  
3 grocery store there, and it's a parking lot for the grocery  
4 store.

5 Q All right. And so you're expecting other individuals to  
6 arrive?

7 A That is correct.

8 Q Did they?

9 A Yes, sir, they did.

10 Q Who arrived there?

11 A The Defendant Warren and Twitty. Warren was driving a  
12 blue-colored Cadillac, and Twitty was in the front passenger's  
13 seat.

14 Q Agent Zayas, I'll briefly show you what I've marked as  
15 Government's Exhibit 11. Do you recognize this photograph?

16 A Yes, sir.

17 Q And what is that?

18 A That's the blue Cadillac that they arrived in on June the  
19 3rd, 2013.

20 Q Who was driving that car on that date?

21 A The Defendant Warren.

22 Q Daryl Warren?

23 A Yes, sir.

24 Q And is this a fair and accurate depiction of the way the  
25 car looked at that time?

1 A Yes, sir.

2 MR. STEVENS: Judge, I'd offer Government's Exhibit  
3 11.

4 MR. JIMERSON: No objection.

5 THE COURT: Exhibit 11 is received into evidence.

6 MR. STEVENS: Thank you. May I publish, Judge?

7 THE COURT: You may. And I mean we just turned it  
8 on. It's not turned on normally, so you should use this for  
9 identifying your exhibits as well. We'll just turn it on and  
10 off.

11 MR. STEVENS: Okay. Thank you, Judge. And I expect  
12 to have very few actual physical exhibits like this. Most of  
13 what we do will be video.

14 THE COURT: Okay.

15 Q (By Mr. Stevens) All right. Agent Zayas, that's the  
16 Cadillac you identified in Government's Exhibit 11?

17 A Yes, sir.

18 Q And that's the car that Daryl Warren drove onto the lot  
19 on June 3rd of 2013?

20 A That's correct.

21 Q Can you make out the license number there?

22 A Yes, sir.

23 Q And what is it?

24 A That's D as in Delta, H as in Hotel, 7, F as in Foxtrot,  
25 2, Z as in Zulu.

1 Q After that car pulled onto the lot, did you find yourself  
2 shortly thereafter in the passenger's seat?

3 A Yes, sir.

4 Q And how was that?

5 A Initially, when they arrived, they exited their vehicle  
6 and approached the vehicle in which Washington was seated. I  
7 was standing outside that vehicle. Washington exited, walked  
8 over, greeted Warren and Twitty, and then they walked over to  
9 my direction, they walked over to where I was standing, and we  
10 all greeted each other. After the initial greeting, they  
11 asked me if the confidential informants were involved, and I  
12 said they weren't. So then all four of us walked over to the  
13 Cadillac and entered the Cadillac.

14 Q And the four of you would be whom?

15 A It would be myself, Washington, Twitty, and Warren.

16 Q Where did Mr. Warren sit in the Cadillac?

17 A When we entered the Cadillac, Warren sat in the front,  
18 the driver's seat.

19 Q And you were in the front passenger's seat?

20 A That is correct.

21 Q I would assume then Mr. Washington and Mr. Twitty are in  
22 the back seat?

23 A Yes, sir. Washington was seated behind Warren, and  
24 Twitty was seated behind me.

25 Q So at this time you've been introduced then to the

1 Defendant Daryl Warren?

2 A Yes, sir, that's correct.

3 Q And, again, what was the purpose of meeting with  
4 Mr. Washington and Mr. Warren that day?

5 A Washington told me that I was going to meet the  
6 individuals that were going to be involved in the home  
7 invasion robbery.

8 Q All right. Did you then, in the Cadillac, explain the  
9 facts surrounding this, this home invasion robbery?

10 A That is correct.

11 Q Will you tell the jurors, please, what you talked about  
12 on that date?

13 A What I explained was that I was a disgruntled courier of  
14 five to six kilograms of cocaine for a Mexican organization  
15 and that I was upset because I was only getting paid \$1,000 a  
16 kilo to move those drugs to another location and I didn't feel  
17 like I was being compensated correctly, so I was seeking  
18 individuals which could rob this cocaine. I explained that on  
19 the day of the collection I'm provided the location of the  
20 house. I don't know where the house is prior to that date.  
21 I'm provided a specific amount of time in which to arrive to  
22 the house. Upon arriving to the house, I observe two  
23 individuals, one of which has a gun in their pants. That  
24 individual stays with me. The second individual goes to a  
25 back room in the house, comes back, hands me my five or six

1 kilograms of cocaine, and tells me where to take it; however,  
2 while I'm standing there waiting, I observe an additional 20  
3 to 22 kilograms of cocaine that have stamps on them in the  
4 residence, but they never take my cocaine from that. They  
5 take it out the back room. I'm provided the cocaine, told  
6 where to go, and I depart.

7 Q Are there purposes for each of those statements that you  
8 made to Mr. Warren and the other coconspirators at that time?

9 A Yes, sir.

10 Q Let's talk specifically about your reference to being a  
11 courier for a drug cartel. What's the purpose of introducing  
12 that element?

13 A What we're trying to do during the course of this thing  
14 is to elevate the level of unknown and to elevate the level of  
15 violence in order to do away with individuals that are simply  
16 down on their hard luck and to get to the point where we're  
17 targeting individuals that are truly involved in this type of  
18 crime. So what we do is we create hurdles and raise the level  
19 of violence. So in that particular instance, we're letting  
20 them know that this is cartel-level narcotics. He's dealing  
21 with a major drug trafficking organization.

22 Q All right. You referred also to two guards in the house,  
23 one with a gun in his pants. Is that for the same reason?

24 A Yes, sir. We want to elevate the level of violence. So  
25 in order to be able to steal this cocaine, they know that

1 they're going to at least encounter one individual that has a  
2 gun that's there to protect the drugs.

3 Q You talked about, I believe, a back room in the house, in  
4 the stash house?

5 A Yes, sir.

6 Q Why introduce this back room? Why refer to that?

7 A What the back room does -- it creates an unknown, so they  
8 don't know if there's an individual back there with a gun, if  
9 there's more drugs or what's involved in the back room. So,  
10 again, raising the level of violence, raising another hurdle  
11 that has to be overcome in order to steal this cocaine.

12 Q Again, this is in order to weed out individuals who  
13 wouldn't otherwise be interested in this?

14 A That's correct.

15 Q Again, you referred to another 20 to 22 kilograms of  
16 cocaine in the house. Was there a purpose for -- for  
17 referring to that?

18 A Yes. What that shows is that there is multiple --

19 MR. JIMERSON: Let me object, Your Honor. First of  
20 all, it calls for a narrative. Two, it's also speculation as  
21 to what other people will do.

22 THE COURT: Well, this is why he told these -- why he  
23 gave this story as his explanation for why he was giving this  
24 story, so I'm overruling it.

25 Q (By Mr. Stevens) You can proceed.



1 A So saying that there's 20-22 kilograms of cocaine,  
2 meaning that I'm there to collect cocaine, there's individuals  
3 coming behind me, so more individuals will be coming to that  
4 house to collect the cocaine, so another hurdle to overcome.  
5 More individuals may be in the house or may be involved in  
6 that location when this robbery is attempted.

7 Q Along similar lines, do you indicate -- did you indicate  
8 that day that these kilograms of cocaine in the stash house  
9 would be marked or stamped?

10 A That is correct.

11 Q Why did you do that?

12 A Because individuals that are involved in the drug  
13 business understand the way that cartels operate.

14 MR. JIMERSON: Objection, Your Honor. Speculation.

15 THE COURT: Overruled.

16 Q (By Mr. Stevens) You can proceed.

17 A They understand that cartels operate, they put stamps on  
18 their cocaine, and what that signifies is that as the cocaine  
19 is being produced and packaged for distribution, stamps are  
20 placed on the kilograms, and those stamps mean that they're  
21 going to go to a specific individual in whatever country  
22 they're being taken into, so by there being stamps on those  
23 kilograms, they understand that it's cartel.

24 THE COURT: Excuse me. You don't know what's  
25 actually in these Defendants' minds, these people you're

1 talking to, right?

2 THE WITNESS: No. This is why I'm stating it, ma'am.

3 THE COURT: Right, because you're hoping that's what  
4 they think, right?

5 THE WITNESS: That they understand that, yes, ma'am.

6 THE COURT: Well, you keep telling the Jury that they  
7 understand that, but you have no knowledge of what was in  
8 Mr. Warren, Washington, and Twitty's minds that day?

9 THE WITNESS: That is correct.

10 THE COURT: Okay. So make that clear when you answer  
11 these questions, please.

12 THE WITNESS: Yes, ma'am.

13 Q (By Mr. Stevens) All right. Agent Zayas, let's talk  
14 about -- you referred before to the back room being an  
15 unknown. Did you introduce other unknowns that day?

16 A Yes, sir.

17 Q And, for example, the location of the stash house?

18 A Yes, sir.

19 Q What did you tell these individuals about that?

20 A I told these individuals that on the day of the  
21 collection I'm told the general area to wait and then I  
22 receive a phone call and then I'm given a specified period of  
23 time in which to arrive at the house, so I don't know the  
24 location of the house until the day that I'm to collect the  
25 cocaine.

1 Q And why does that matter?

2 A For a couple of reasons. One, that they -- those  
3 individuals, if they decide to go rob the house, can't get to  
4 the house before me, so to protect the public I'm not giving  
5 them the location, and then, secondly, it is once they know  
6 the location of the house, there's no longer a need for me.  
7 So, in other words, I can't be tortured or I can't -- nothing  
8 can happen to me in order to divulge that location of the  
9 house because I simply just don't know the location.

10 Q Did you, during the course of this and subsequent  
11 meetings, offer opportunities to not be involved in this?

12 A Yes, sir, continuously.

13 Q How did you go about doing that?

14 A I'll make statements like, "Are we straight? Are we  
15 cool? Do you feel me?" I'll constantly say that while  
16 discuss -- in discussions about this robbery in order for them  
17 to provide -- for them -- to allow them a point at which they  
18 could say, "Listen, it's not cool; I don't want to do it. No,  
19 it's not straight" or "No, I don't feel you. I don't feel  
20 this. I don't want to do it."

21 Q What was the overall purpose of this conversation after  
22 Robert Washington had introduced you to Daryl Warren?

23 A It was to ensure that they heard the parameters  
24 surrounding this robbery from my mouth, that there was no  
25 misunderstanding of what the hurdles were, what the level of

1 violence it was going to take to commit this robbery, and then  
2 to question them and to identify whether or not they wanted to  
3 do it.

4 MR. STEVENS: All right. Your Honor, at this time,  
5 we intend to play the first video clip.

6 THE COURT: And do I understand that the -- the  
7 transcript is on the screen?

8 MR. STEVENS: Correct.

9 THE COURT: All right. So, members of the Jury, as  
10 you've just heard, there's a transcript of the recording  
11 you're about to hear, and it's actually going to roll on the  
12 screen with the video, and it also undertakes to identify the  
13 speakers engaged in the conversation. The transcript, the  
14 written words, are for the limited purpose of helping you  
15 follow the conversation as you listen to the recording and  
16 also to help you keep track of the speakers. Differences in  
17 meaning between what you hear in the recording and what you  
18 read in the transcript could be caused by things such as the  
19 inflection in the speaker's voice. It is what you hear and  
20 see on the video, however, that's the evidence, not the  
21 transcript. The transcript is just an aid to help you  
22 understand the evidence.

23 You may play -- which one is this?

24 MR. STEVENS: This is June 3rd, Clip 2, Judge. This  
25 is from Government's Exhibit 5.

1 THE COURT: All right.

2 (Video played.)

3 Q (By Mr. Stevens) All right. Agent Zayas, at the  
4 beginning of that particular video and throughout the course  
5 of it, you say things like, "Esto es lo cosa, this is the  
6 thing," and other similar Spanish phrases. Why do you do  
7 that?

8 A Because I'm Hispanic and it would make sense that since  
9 I'm Hispanic and I'm dealing with other Hispanic individuals  
10 and that's the reason that I'm moving that amount of cocaine  
11 for these -- for this organization.

12 Q All right. When you do that, do you frequently repeat it  
13 in English?

14 A That's correct.

15 Q All right. The camera we saw there -- the camera view  
16 was moving around quite a bit. Why was that?

17 A Because that piece of equipment is affixed to my body, so  
18 as I move, the camera moves.

19 Q And who was the individual that was primarily visible  
20 there in the camera?

21 A The Defendant Warren.

22 Q He was sitting in the driver's seat?

23 A That's correct.

24 Q Early on in that particular call, you say to Mr. Warren  
25 that "On Wednesday, they will call me." What are you

1 referring to there?

2 A That's the day in which the collection is to occur.

3 Q That would have been June 5th of 2013?

4 A That's correct.

5 Q All right. And, again, we're meeting on June 3rd of 2013  
6 at this time, is that right?

7 A That is correct.

8 Q Okay. And who was it that was going to be calling you?

9 A Allegedly, the individuals with the information as to  
10 where the stash house was.

11 Q And, again, so you're indicating that you don't know the  
12 location of the stash house?

13 A That's correct.

14 Q You refer to the two guys in the house, one with a gun in  
15 his pants, is that right?

16 A Yes, sir.

17 Q And why is that?

18 A Again, raising the level of violence that it's going to  
19 take in order to accomplish this theft of the cocaine.

20 Q You refer in your conversation with Mr. Warren there to  
21 the individual in the house hands you five to six kilograms of  
22 cocaine, is that right?

23 A Yes, sir.

24 Q That would be what you're supposed to transport, correct?

25 A Correct.

1 Q And then you see an additional 20 to 22 kilograms of  
2 cocaine?

3 A Yes, sir, in the living room section of the house.

4 Q So we're talking about a total of 25 to 28 kilos, is that  
5 right?

6 A Yes, sir.

7 Q Mr. Warren, at one point, asked you, "Where's the area  
8 at?" Do you recall that?

9 A Yes, sir.

10 Q And what was your response to that?

11 A That it could either be where we were located, which was  
12 the southern part of the city, or it could be in the northern  
13 part of the city, but it would be contained within the city of  
14 St. Louis.

15 Q But he's attempting to determine from you where this  
16 stash house is, is that right?

17 A That is correct.

18 Q You tell him, quote, unquote, "These guys ain't just  
19 going to hand you this shit." Why do you refer to that? Why  
20 do you tell Mr. Warren that?

21 A Because I want him to understand that it's going to take  
22 a certain level of violence in order to take this cocaine,  
23 that those individuals are there for the purpose of protecting  
24 that cocaine, and that in order to go there and steal that  
25 cocaine, these individuals are not simply going to hand him

1 the cocaine; it's going to take a level of violence to steal  
2 that cocaine.

3 Q Now, you were sitting across from Daryl Warren at the  
4 time of those particular statements, is that right?

5 A That is correct.

6 Q And we saw it there on the video?

7 A Yes, sir.

8 Q Do you recall Mr. Warren's demeanor when you told him,  
9 "These guys ain't just going to hand you the shit"?

10 A He was smiling.

11 Q You repeatedly asked Mr. Warren during this part of the  
12 conversation, "You feel me?" Is that right?

13 A Yes, sir.

14 Q Why do you ask him that?

15 A Because, again, that's an opportunity for him to tell me,  
16 "No, I don't feel you. I'm not a part of this. I don't do  
17 this, and I'm out."

18 Q Did he do that at any time in this conversation?

19 A No, sir.

20 Q Instead, he asked you a little later, "How many -- so how  
21 many dudes is in the house?" Is that right?

22 A Yes, sir.

23 Q At the end of the clip, Mr. Warren indicates, "This is  
24 the real deal, man." Did you hear that?

25 A Yes, sir.



1 Q All right. Did you give Mr. Warren additional  
2 opportunities to not be involved in this?

3 A Yes, sir.

4 MR. STEVENS: J3-3, please. This is also from  
5 Government's Exhibit 5, Your Honor, June 3rd.

6 (Video played.)

7 Q (By Mr. Stevens) Agent Zayas, we talked about  
8 opportunities for Mr. Warren to back out. At the beginning of  
9 this, you said, "You feel me? Is that something you guys can  
10 handle?" Is that right?

11 A Yes, sir.

12 Q Do you recall his response?

13 A He responded they could handle the robbery.

14 Q And he was continuing to smile at that time?

15 A Yes, sir.

16 Q If Mr. Warren at that point had said that he was not able  
17 to handle it, where would this investigation have gone?

18 A This portion of the investigation would have stopped.

19 Q Mr. Warren told you, "I got one more guy. He ain't here  
20 right now." Do you recall that?

21 A Yes, sir.

22 Q Were you and ATF ever able to confirm whether there was  
23 another individual other than the three in the Cadillac that  
24 was involved in this conspiracy?

25 A No, sir, we were unable to.

1 Q All right. And we'll talk about that a little bit more  
2 later. Mr. Twitty, from the back seat, indicates, "When you  
3 get that phone call, you got to at least call us right then  
4 and there," is that right?

5 A Yes, sir.

6 Q And do you recall what your response was about how you  
7 would handle that?

8 A I said that what we could do is we could all be together,  
9 so once I obtained that location to the stash house, which  
10 meant that I had a specified period of time in which to arrive  
11 and the fact that they knew my starting point, that I could  
12 provide them -- they could be next to me, I could give them  
13 the address, and if they wanted to get ahead of me, they could  
14 get ahead of me before I entered that house.

15 Q And why did you indicate that, that you could all be  
16 together when you get the phone call?

17 A Because what that does is on -- on the final day, the day  
18 of the robbery, any additional individuals which may be  
19 arriving to be part of this crew, it gives me an opportunity  
20 to talk to those individuals and to be able to go through what  
21 I just went through before, explain exactly the parameters,  
22 explain all the dangers involved, explain all the hurdles,  
23 explain the level of violence, and decide whether or not that  
24 individual also wishes to participate in this robbery.

25 Q All right. Does it give these individuals as well an

1 opportunity not to show?

2 A Yes, absolutely, yes, sir.

3 Q You introduced the idea of a trap car, is that right?

4 A Yes, sir.

5 Q Was there anything else in the entire course of this  
6 investigation that you offered these individuals as far as  
7 tools they could use?

8 A No, sir. Just the trap car.

9 Q Did you ever offer them firearms?

10 A No, sir.

11 Q Did you ever ask them to bring firearms?

12 A No, sir.

13 Q All right. But you introduced this, this trap car, and  
14 Mr. Twitty's response, you recall, was, "We have a car"?

15 A That is correct.

16 Q All right. But then they showed interest in the trap  
17 car, is that right?

18 A They asked me questions about it, yes, sir.

19 Q Okay. And, again, at this particular point in the video,  
20 Mr. Warren smiles again, is that right?

21 A Yes, sir.

22 Q When we're talking about a trap car, what are you  
23 referring to? Can you explain that to a jury -- for the Jury?

24 A A trap car is a vehicle, which someone gets that vehicle  
25 and then creates a space in it where you can conceal something

1 into that space so that if someone were to look for it they  
2 couldn't find it. So it takes a series of buttons in order to  
3 open that space up, commonly, used to hide drugs from law  
4 enforcement.

5 Q All right. Did you have to explain that concept to  
6 Mr. Warren, Mr. Twitty, or Mr. Washington?

7 MR. JIMERSON: Objection. Relevance, Your Honor.

8 THE COURT: Yeah, sustained. Can you all approach  
9 the bench?

10 MR. STEVENS: Yes.

11 (A bench conference was held on the record and outside of  
12 the hearing of the Jury as follows:)

13 THE COURT: The Jury's looking at the videotape, and  
14 I don't -- I mean you're asking him to go over every single  
15 line in the videotape, repeat it, so the Jury -- you want to  
16 emphasize this evidence, have them hear it twice, three times,  
17 but you can't ask him to comment on the evidence. If you ask  
18 him again if somebody's smiling, I'll tell you not to from the  
19 bench because that's -- they can -- the Jury can see that, and  
20 they also can hear what the witnesses said to him, so I  
21 really -- you're really way over the line, Mr. Stevens, okay?

22 MR. STEVENS: I'll minimize it, Judge. I'll ask him  
23 just to explain context, that kind of thing.

24 THE COURT: Okay. Thank you.

25 MR. STEVENS: All right. Thank you.

1 (The following proceedings were held within the hearing  
2 of the Jury.)

3 Q (By Mr. Stevens) All right. Agent Zayas, what's the  
4 purpose of introducing the trap car?

5 A What the trap car does for us is on the final day, if  
6 they decide to go ahead with the robbery, it gives me an  
7 excuse to take the individuals that are going to be involved  
8 in that robbery to a location where it's safe for us, safe for  
9 the public, and safe for them to conduct the arrest.

10 Q At the end of the video, you refer to "Give my half to  
11 them." What does -- what does that -- who are you referring  
12 to and half of what?

13 A Where we were sitting in the Cadillac, the vehicle -- I  
14 don't know if you can see it on the video; there's a vehicle  
15 next to it. Inside that vehicle, the two confidential  
16 informants were sitting in it, so when I made that statement,  
17 I looked at Washington and I said once the robbery happens,  
18 depending upon what happens to me in the house, give my  
19 portion of the drugs to the confidential informants, and then  
20 I would retrieve those narcotics at a later time.

21 Q As this conversation went on, did you -- did you talk to  
22 Mr. Warren about the distribution of the cocaine further?

23 A Yes, sir.

24 MR. STEVENS: J3-4, please.

25 THE COURT: All right. This is also still part of

1 the same exhibit?

2 MR. STEVENS: Yes, Judge. It's Exhibit 5, June 3rd,  
3 2013.

4 THE COURT: Hold on a second. That's okay. Go  
5 ahead.

6 (Video played.)

7 Q (By Mr. Stevens) Asking Mr. Warren, "You aren't going to  
8 have any problem unloading that shit" is what you referred to.  
9 What are you referring to there?

10 A His ability to sell the kilograms of cocaine after the  
11 robbery.

12 Q At the end of that video, you ask, "Are we square?" and  
13 "Are we good?" What were the purposes of asking that  
14 question?

15 A To ensure after Warren heard everything that I'd said  
16 that he still wants to be involved and commit the armed  
17 robbery, the robbery.

18 Q Whose hands did you shake there at the end of that video?

19 A I shook the Defendant Warren and Washington that was  
20 sitting in the back seat.

21 Q Now, on the video, you referred to Mr. Warren appearing  
22 there in the driver's seat, is that right?

23 A That's correct.

24 Q There were the other two individuals in the back seat  
25 that really don't appear much on that video, correct?

1 A Yes, sir.

2 Q Were there -- for this and other meetings, were there  
3 other agents conducting video surveillance of the overall  
4 area?

5 A Yes, sir.

6 Q And why is that done?

7 A We do -- prior to any type of investigation like this is  
8 we have an operational plan, and within that plan, it  
9 describes specific duties to anybody that's involved in that  
10 operation. For instance, we would have a number of  
11 individuals watching myself, other individuals watching the  
12 confidential informant, other individuals --

13 THE COURT: Actually, his question was why, why you  
14 do that. You're telling him what you do. He asked why you do  
15 it.

16 THE WITNESS: Oh, I'm sorry. I misunderstood the  
17 question.

18 THE COURT: So he said why do you have all that  
19 surveillance.

20 A In order for individuals to have different duties. So a  
21 number of agents would have different duties throughout the  
22 course of that undercover operation.

23 Q (By Mr. Stevens) All right. And one of those duties is  
24 agents who conduct the surveillance video, is that right?

25 A That's correct.

1 Q Okay. In this case, does that video show you meeting  
2 with these individuals on June 3rd?

3 A Yes, it does.

4 Q And that video would show you meeting with whom on the  
5 lot?

6 A It would show me meeting with Washington, Twitty, and the  
7 Defendant Warren.

8 MR. STEVENS: J3-5, please, from Government's Exhibit  
9 5.

10 THE COURT: Okay. And here's what we're going to do.  
11 We can just leave that turned on, but if you switch exhibits  
12 and when you're done with this Exhibit 5, let me know.

13 MR. STEVENS: Okay. Thank you, Judge.

14 (Video played.)

15 Q (By Mr. Stevens) All right. Agent Zayas, was the  
16 Defendant Daryl Warren depicted there meeting with you on  
17 June 3rd?

18 A Yes, sir.

19 MR. STEVENS: And we are finished with -- yeah,  
20 Judge, can we -- I think that just played a short. It should  
21 have been a little bit longer. Can we play it again?

22 THE COURT: Okay. Yeah, you can.

23 MR. STEVENS: All right.

24 (Video played.)

25 Q (By Mr. Stevens) Are Daryl Warren, Michael Twitty, and



1 Robert Washington depicted there with you?

2 A Yes, sir.

3 Q What -- what is that in the foreground? What vehicle is  
4 that in the foreground?

5 A That's the blue Cadillac.

6 MR. STEVENS: All right. Thank you.

7 THE COURT: Now you can turn it off, Brittany.

8 Q (By Mr. Stevens) Did you all plan to meet again the next  
9 day?

10 A Yes, sir.

11 Q That would have been June 4 of 2013?

12 A Yes, sir.

13 Q All right. Before we get to that, are you aware that  
14 during the course of this investigation phone records were  
15 obtained from Sprint regarding Robert Washington and Daryl  
16 Warren?

17 A Yes, sir.

18 MR. STEVENS: Your Honor, at this time, I would offer  
19 Government's Exhibits 12 and 13, phone records from Sprint  
20 with business records certification establishing that these  
21 are records of that organization and that they are records of  
22 Robert Washington and Daryl Warren.

23 THE COURT: Any objection?

24 MR. JIMERSON: No, ma'am.

25 THE COURT: All right. Exhibits 12 and 13 are

1 received into evidence.

2 MR. STEVENS: Thank you, Judge.

3 Could we switch to the --

4 THE COURT: Yeah.

5 MR. STEVENS: Thank you.

6 Q (By Mr. Stevens) All right. Agent Zayas, I'm going to  
7 show you what's marked as Government's Exhibit 12 admitted  
8 into evidence. It's a Sprint certification of business  
9 records, and on the next page, does that indicate here at the  
10 top the subject number, the subject phone number?

11 A Yes, sir.

12 Q And what is that?

13 A It's 314-564-2492.

14 Q All right. And on that record, does it also indicate the  
15 person to whom that phone is billed?

16 A Yes, sir.

17 Q And who is that?

18 A Robert Washington.

19 Q Does it also indicate the date on which the account was  
20 established in Mr. Robert Washington's name?

21 A Yes, sir. It states that the account was established  
22 5-23 of 2011.

23 Q All right. And, again, here at the bottom, it refers to  
24 a personal telephone number or PTN. Do you see that?

25 A Yes, sir.

1 Q And, again, what is the number?

2 A 314-564-2492.

3 MR. STEVENS: All right. May I bring this over,  
4 Judge?

5 THE COURT: You may.

6 MR. STEVENS: Thank you.

7 THE COURT: And, again, Mr. Jimerson, if you need to  
8 move over there or wherever --

9 MR. JIMERSON: Yes, ma'am.

10 THE COURT: -- go ahead.

11 Well, now, who's going to stand over there? I didn't  
12 realize you were saying you were going to put it all the way  
13 over there.

14 MR. STEVENS: I was just going to --

15 THE COURT: Who's going to write on it?

16 MR. STEVENS: Yeah, I was just going to write the  
17 number and walk back, Judge.

18 THE COURT: You're going to write on it?

19 MR. STEVENS: Yes.

20 THE COURT: Well, then leave it over here by you.

21 MR. STEVENS: Okay.

22 THE COURT: You can put it -- yeah, right -- yeah,  
23 thanks.

24 MR. STEVENS: Okay. Mr. Jimerson, can you --

25 MR. JIMERSON: I'll walk around.

1 Q (By Mr. Stevens) Okay. All right. And so according to  
2 Government's Exhibit 12, Agent Zayas, we have Robert  
3 Washington at what phone number?

4 A 314-564-2492.

5 Q All right. Thank you. And according to these records,  
6 that number was active at the time of these meetings?

7 A Yes, sir.

8 Q I'll show you now Government's Exhibit 13, already  
9 admitted into evidence, again, a certification of business  
10 records from Sprint, and do you see the subject number here  
11 and the person billed for that number?

12 A Yes, sir.

13 Q And what is the number?

14 A 314-372-6037.

15 Q 6037, is that right?

16 A Yes, sir.

17 Q And that's Daryl Warren?

18 A Yes, sir.

19 Q All right. If we go to the bottom here, does it again  
20 indicate the same number as the personal telephone number,  
21 314-372-6037?

22 A Yes, sir.

23 Q Again, according to these records, that number was active  
24 at the time of these meetings?

25 A Yes, sir.

1 Q You're aware that the actual call records that go along  
2 with Government's Exhibit 13, Daryl Warren's phone records,  
3 were produced in electronic format?

4 A Yes, sir.

5 Q And I'll show you --

6 MR. JIMERSON: Before you go there, may we approach  
7 the bench on a matter, Your Honor?

8 THE COURT: Yeah, you may.

9 (A bench conference was held on the record and outside of  
10 the hearing of the Jury as follows:)

11 MR. JIMERSON: Your Honor, I just noticed when I was  
12 sitting there that, actually, Mr. Stevens has Government's  
13 Exhibit #1 facing the Jury, which it appears to be the arrest,  
14 arrest photos at the time. They're all kind of standing  
15 there. I would ask that, you know, until this is given to  
16 them that those -- that that not be shown to where they can  
17 look right at it.

18 THE COURT: Well, it's been -- it's already been  
19 introduced, and they've already seen it, but I think you can  
20 turn it around after you're finished with it and do the same  
21 with any other exhibits, okay?

22 MR. JIMERSON: Okay. Thank you.

23 (The following proceedings were held within the hearing  
24 of the Jury.)

25 Q (By Mr. Stevens) Government's Exhibit 14. Agent Zayas,

1 do you recognize Exhibit 14 as Daryl Warren's Sprint phone  
2 records?

3 A Yes, sir.

4 Q And how do you recognize it?

5 A My initials are affixed to the DVD or CD.

6 Q You've reviewed those previously?

7 A Yes, sir.

8 MR. STEVENS: All right. Your Honor, I would offer  
9 Government's Exhibit 14 pursuant to the business records  
10 affidavit.

11 THE COURT: Any objection?

12 MR. JIMERSON: No, ma'am.

13 THE COURT: All right. Exhibit 14 is received into  
14 evidence.

15 MR. STEVENS: Thank you, Judge.

16 Q (By Mr. Stevens) Government's Exhibit 14, Agent Zayas,  
17 that contains Daryl Warren's phone records, phone calls for  
18 June 3rd, 4th, and 5th of 2013?

19 A Yes, sir.

20 Q And did you meet with Daryl Warren on each of those  
21 dates?

22 A Yes, sir.

23 Q And did Robert Washington meet with Daryl Warren on each  
24 of those dates?

25 A Yes, sir.

1 MR. STEVENS: Judge, if I could, I'd like to show the  
2 phone records from those dates from Government's Exhibit 14 to  
3 the Jury.

4 THE COURT: Okay. You may do so, and I guess that's  
5 on the computer?

6 MR. STEVENS: Yes.

7 THE COURT: Okay. You need to switch it. That's  
8 okay.

9 Q (By Mr. Stevens) All right. Agent Zayas, if we refer to  
10 the top here, these are call records for personal telephone  
11 number 314-372-6037, is that right?

12 A Yes, sir.

13 Q As the records identify Daryl Warren's phone number?

14 A That is correct.

15 Q All right. And if we could page down, please, does this  
16 shown phone calls to and from another number that are  
17 highlighted here?

18 A Yes, sir.

19 Q And what number -- what phone number is that that's  
20 highlighted?

21 A Robert Washington.

22 Q 564-2492?

23 A Yes, sir.

24 Q So this shows various calls on June 3rd of 2013 between  
25 Robert Washington and Daryl Warren?

1 A Yes, sir.

2 Q The same date on which you met with both of those  
3 individuals?

4 A That's correct.

5 Q Can we page down? If you could, could you just count up  
6 the number of calls we have there?

7 A There's 10 on that sheet.

8 Q All right. Could you page down, please? All right.  
9 Going to the next page, there's another call there between  
10 Daryl Warren and Robert Washington?

11 A That is correct.

12 Q For a total of 11 on June 3rd of 2013, is that right?

13 A That's correct.

14 Q Again, the date is still June 3rd there?

15 A Yes, sir.

16 MR. JIMERSON: Let me object to the relevance of this  
17 line of questioning. So what?

18 THE COURT: Overruled.

19 MR. STEVENS: Thank you, Judge.

20 Q (By Mr. Stevens) All right. You mentioned, at the end of  
21 the June 3rd, 2013 meeting, that you and Robert Washington and  
22 Daryl Warren agreed to meet again?

23 A Yes, sir.

24 Q And when did you meet again?

25 A The following day, on June the 4th, year 2013.



1 Q And did you meet with both Mr. Washington and Mr. Warren  
2 on that date?

3 A That's correct.

4 Q And, Agent Zayas, we talked about the meetings that  
5 occurred previous to that. Could you point out for the Jury  
6 on Government's Exhibit 8, already admitted into evidence,  
7 where it was that you met on June 4 of 2013?

8 A It's going to be in the top right-hand corner at the 2800  
9 block of Iowa.

10 Q That was on June 4?

11 A Yes, sir.

12 Q All right. Thank you. This is all south St. Louis city,  
13 is that right?

14 A That's correct.

15 Q And, Agent Zayas, I'd refer you to Government's  
16 Exhibit 6, which you've already identified as video clips from  
17 that June 4, 2013 meeting.

18 A Yes, sir.

19 Q And the location where you met on June 4th, what was that  
20 location?

21 A It's -- it was the -- it was an open lot behind the  
22 residence of Washington. Washington lived on the next street  
23 over.

24 Q All right. And so you were at an open vacant lot there?

25 A It was an open vacant lot with a number of individuals

1 standing around in the lot.

2 Q When you initially met with Mr. Warren and  
3 Mr. Washington, did Mr. Warren have specific questions for  
4 you?

5 A Yes, he did.

6 Q Regarding what?

7 A Regarding the robbery.

8 Q All right. And, specifically, was he asking you about  
9 the stash house and the number of people in it?

10 A That's correct.

11 MR. STEVENS: J4-1, please. Judge, this is a clip  
12 from Government's Exhibit 6.

13 THE COURT: All right. You may play it.

14 MR. STEVENS: Thank you.

15 (Video played.)

16 Q (By Mr. Stevens) All right. Agent Zayas, who was that in  
17 the white T-shirt that you were talking to?

18 A That was the Defendant Warren.

19 Q And the other individual?

20 A Robert Washington.

21 Q Mr. -- we started out by asking about Mr. Warren asking  
22 about the number of people in the house. He also wanted other  
23 information about the house, is that right?

24 A Yes, sir.

25 Q And what was that?

1 A He was questioning me about the back room.

2 Q Okay. And that's one of the unknowns that you've  
3 introduced here?

4 A Yes, sir.

5 Q At the end of that, you refer to "Tomorrow morning, I've  
6 got to get my girl straight." Why -- why the reference to the  
7 girl, and who are you referring to?

8 A I'm referring to the agent that I brought with me the day  
9 before, Agent Jordan.

10 Q A female agent posing as your girlfriend?

11 A Yes, sir.

12 Q All right. And what was the purpose of referring to her?

13 A The purpose of referring to her, it would give me an  
14 excuse the following day not to be initially present when they  
15 all met, so that I could pick the meeting location on that  
16 particular day.

17 Q And the next day we're talking about is June 5th of 2013,  
18 is that right?

19 A Correct. That's the day of the robbery.

20 Q All right. As this next clip begins, do you continue to  
21 talk about your girlfriend for that reason?

22 A Correct.

23 MR. STEVENS: J4-2, please, also from Government's  
24 Exhibit 6, Your Honor.

25 (Video played.)

1 Q (By Mr. Stevens) Again, Mr. Warren is asking specific  
2 questions about the number of people in the house?

3 A Correct.

4 Q And right there at the end, you ask him, "What do you  
5 think?" And his response, "It's going to be a little  
6 shootout, though, probably," is that right?

7 A Yes, sir.

8 Q What was your purpose for asking him, "What do you  
9 think?"

10 A Because I wanted to allow him an opportunity to say,  
11 after he had heard it for the second time, "No, I don't want  
12 to do this."

13 Q Instead his response is, "I think it's pretty good"?

14 MR. JIMERSON: Objection. Asked and answered.

15 THE COURT: Sustained.

16 MR. STEVENS: All right. I'll move on, Judge.

17 Q (By Mr. Stevens) As you stand there with Mr. Warren, does  
18 the discussion about the armed home invasion robbery continue?

19 A Yes, sir.

20 MR. STEVENS: J4-3, please, also from Government's  
21 Exhibit 6.

22 (Video played.)

23 Q (By Mr. Stevens) At the beginning of that tape, there's a  
24 reference to "We'll hook up around 11:00 then." Who was it  
25 that said that?

1 A That was Warren.

2 Q He's suggesting a time that you should meet?

3 A That is correct.

4 Q At one point, you look around and Mr. Washington says,  
5 "You good." What was going on there on this lot when you  
6 looked around and Mr. Washington indicated, "You're good"?

7 A There was a number of individuals on the lot, and there  
8 were individuals walking around us. So at one point, one of  
9 those individuals walked close to us, so I stopped the  
10 conversation based upon what our conversation was about, and  
11 at that point, Washington was -- was looking around,  
12 conducting surveillance, making sure nobody could overhear us  
13 and told me, "It's okay. You can continue to talk."

14 Q At one point, Mr. Warren indicates that they might need  
15 that car, the trap car, is that right?

16 A Yes, sir.

17 Q Did you ultimately end up showing him that trap car?

18 A Yes, I did.

19 THE COURT: Counsel, we're going to take a recess  
20 now, so I'm going to interrupt you.

21 Members of the Jury, we're going to take our  
22 afternoon recess, and I want to remind you of the instructions  
23 I've given you earlier about not discussing this case among  
24 yourselves or with anyone else and keeping an open mind until  
25 you've heard all of the evidence in the case. In addition to

1 not discussing it with anyone else, don't allow anyone to  
2 discuss the case with you or in your hearing, and as I said  
3 before, "Do not discuss" also means don't email, send text  
4 messages, or engage in any other form of written, oral, or  
5 electronic communication and don't do any research or read any  
6 newspaper or, you know, accounts or anything like that, do  
7 any -- don't do any Internet research. Please keep an open  
8 mind until you've heard all of the evidence, and I will -- I  
9 may not repeat these things to you before every recess, but  
10 please keep them in mind throughout the trial because this  
11 instruction about not discussing the case or doing any  
12 research or communicating about it applies throughout the  
13 case. So the Jury is excused. We'll be in recess for 15  
14 minutes, and she'll show you where your jury room is. This is  
15 your first time in there, right? So leave your notebooks on  
16 your chair, and she'll show you where this jury room is, and  
17 just so you know, when I tell you to be back here at a certain  
18 time, from now on, it means meet in the jury room. That's  
19 your room, and so that's where you'll be, and we'll come and  
20 get you from that location from now on.

21 (The following proceedings were held outside the hearing  
22 and presence of the Jury.)

23 THE COURT: All right. If you'll just be back here  
24 in the witness stand in 15 minutes, and, Mr. Stevens, I do  
25 want to caution you again that it gets to a point where it

1 becomes unfairly prejudicial when you repeat the evidence and  
2 put your arguments on it every time you ask a question and  
3 when your witness continues to talk about what's in somebody  
4 else's mind that he can't possibly know, and I would just warn  
5 you to please follow the Rules of Evidence.

6 MR. STEVENS: I understand.

7 THE COURT: Court's in recess.

8 (Court recessed from 2:58 p.m. until 3:20 p.m.)

9 (The following proceedings were held outside the hearing  
10 and presence of the Jury.)

11 THE COURT: All right. You may bring in the Jury.

12 (The following proceedings were held within the hearing  
13 and presence of the Jury.)

14 THE COURT: All right. You all may be seated, and  
15 you may continue, Mr. Stevens.

16 MR. STEVENS: Thank you, Your Honor.

17 Q (By Mr. Stevens) Agent Zayas, we just finished watching  
18 some video from June 4 of 2013, and now, at the end of that,  
19 did you and Mr. Warren talk about meeting at another time?

20 A Yes, sir.

21 Q And what did you set that meeting or when did you set  
22 that meeting?

23 A That would be for the following day, June the 5th, year  
24 2013.

25 Q All right. Now I want to ask you -- previously, you were

1 talking about, with Mr. Warren, 20 to 22 kilograms of cocaine  
2 in the stash house, is that right?

3 A Yes, sir.

4 Q And will you tell the Jury how you arrived at that  
5 particular number?

6 A What I did -- prior to conducting this operation, I spoke  
7 with law enforcement officials that are familiar with what a  
8 typical stash house in --

9 MR. JIMERSON: Objection, Your Honor. First of all,  
10 it's hearsay.

11 THE COURT: Yeah, I -- yeah, I -- I need to hear what  
12 he's going to say. Members of the Jury, we're going to have  
13 to have you leave again while I resolve this evidence.

14 MR. STEVENS: Judge, maybe I can just rephrase the  
15 question.

16 THE COURT: Maybe you can.

17 MR. STEVENS: Okay. Thank you.

18 THE COURT: So the objection is sustained.

19 MR. STEVENS: All right. Thank you, Judge.

20 Q (By Mr. Stevens) Agent Zayas, did you deal with local law  
21 enforcement in putting this operation together?

22 A Yes, sir.

23 Q All right. And after that, did you come up with the 20  
24 to 22 kilos in the stash house?

25 A Yes, sir.



1 Q Thank you. All right. Now, again, on June 4 of 2013,  
2 did you have other agents who were conducting surveillance of  
3 your meeting with Mr. Warren and Mr. Washington?

4 A Yes, sir.

5 Q And would that surveillance show you meeting with those  
6 two individuals on June 4 of 2013?

7 A Yes, sir.

8 MR. STEVENS: J4-4, please. And, Judge, this is the  
9 final clip from Government's Exhibit 6.

10 (Video played.)

11 Q (By Mr. Stevens) All right. That's the three of you  
12 meeting on that vacant lot?

13 A Yes, sir.

14 MR. STEVENS: All right. J4C, please.

15 Q (By Mr. Stevens) Agent Zayas, at this time, I'd like to  
16 return to Daryl Warren's phone records, and on Government's  
17 Exhibit 14, does that also reflect calls on June 4 of 2013,  
18 the date that you met with Robert Washington and Daryl Warren  
19 on that lot?

20 A Yes, sir.

21 Q Okay. Now, at the top again there, do you see personal  
22 telephone number 314-372-6037?

23 A Yes, sir.

24 Q And according to the records, those would be -- the phone  
25 records -- that would be Daryl Warren's phone number?

1 A That's correct.

2 Q All right. Will you page down, please? And do you see  
3 various calls to and from 314-564-2492?

4 A Yes, sir.

5 Q And whose phone number is that?

6 A Robert Washington.

7 Q All right. And can you total up the number of calls we  
8 have here on June 4 of 2013?

9 A That would be eight phone calls.

10 Q All right. Will you page down, please? Two additional  
11 phone calls there?

12 A Yes, sir.

13 Q And again. Again. All right. And so we'd have a total  
14 of 13 calls between Mr. Washington's phone number and  
15 Mr. Warren's phone number on June 4 of 2013?

16 A That's correct.

17 Q All right. Were you personally involved in any of those  
18 phone calls?

19 A No, sir.

20 Q And if you look here, the last calls on June 4 of 2013  
21 are at about what time?

22 A At 8:24 in the evening.

23 Q All right. And the one below that?

24 A That's at 8:29 in the evening.

25 Q All right. That's substantially later than your meeting,

1 is that right?

2 A That's correct.

3 Q All right. Thank you. So you planned to meet on June 5  
4 of 2013?

5 A Yes, sir.

6 Q For what purpose?

7 A That was the day of the robbery.

8 Q All right. And did you engage -- did you and ATF engage  
9 in additional preparation on that day for that meeting?

10 A Yes, sir.

11 Q What sort of preparation did you engage in?

12 A Prior to that date, we had one of our Special Response  
13 Team's SWAT teams fly into St. Louis in preparation for the  
14 arrests if it was to occur the following day.

15 Q All right. And so that SRT team was there for the  
16 purposes of arresting these individuals on June 5 of 2013?

17 A Yes, sir.

18 Q If they showed?

19 A That is correct.

20 Q All right. And I'd like to refer you again then to phone  
21 records from June 5th of 2013 -- J5C, please -- also from  
22 Government's Exhibit 14. Are these again Daryl Warren's phone  
23 records and calls to and from Robert Washington?

24 A That is correct.

25 Q All right. It looks like we have six calls on this page.

1 Could you page down, please? And an additional six calls on  
2 the next page, all on June 5th of 2013, is that right?

3 A Correct.

4 Q For a total of 12 calls between Mr. Washington and  
5 Mr. Warren?

6 A Correct.

7 Q And based on the times there, do all of these calls  
8 occur, obviously, before the time of the last home invasion  
9 robbery meeting?

10 A Yes, sir.

11 Q All right. Thank you. On June 5 of 2013, who showed up  
12 to meet with you?

13 A Initially, it was the two confidential informants with  
14 Washington in one vehicle. In the blue Cadillac that I  
15 observed on the two prior meets, the Defendant Warren and  
16 Twitty.

17 Q All right. Who was driving the blue Cadillac?

18 A Warren.

19 Q And at this June 5th of 2013 meeting, referring to  
20 Government's Exhibit 8, where did that occur?

21 A At Meramec and Gravois.

22 Q All right. And that would be the lower left-hand corner  
23 of this map?

24 A Yes, sir, bottom left-hand corner.

25 Q And that was the first of two meeting locations on that

1 date, is that right?

2 A That is correct.

3 Q Okay. Thank you. All right. Referring you to  
4 Government's Exhibit 7, Agent Zayas, the video clips from  
5 June 5 of 2013, did then the three individuals you  
6 anticipated -- Robert Washington, Daryl Warren, and Michael  
7 Twitty -- show up and meet you there at the car wash lot?

8 A Correct.

9 MR. STEVENS: All right. And let's go to J5-1,  
10 please, from Government's Exhibit 7.

11 THE COURT: Are you done with the phone numbers?

12 MR. STEVENS: I am, Judge.

13 THE COURT: Can you move this so it's not blocking  
14 the -- just move it back over there?

15 MR. STEVENS: Yes. Thank you.

16 THE COURT: Thank you.

17 (Video played.)

18 Q (By Mr. Stevens) Agent Zayas, when that video starts,  
19 Mr. Warren indicates that it's not just the three of them,  
20 that he has somebody else, is that right?

21 A That's correct.

22 Q And you, obviously, indicate that that's a concern to  
23 you?

24 A That is correct.

25 Q Why is that?

1 A Because I want to be able to speak to that individual as  
2 I have with Warren and explain to that individual all the  
3 parameters surrounding this impending robbery.

4 Q Is there a benefit also to having all the individuals  
5 involved in this in a single location?

6 A Yeah. It gives me an opportunity then at that point, if  
7 they wish to travel with me to the next location, they can  
8 travel to the next location to get the car.

9 Q All right. Were you able, again, ever able to confirm  
10 the involvement of any other person in this, in this endeavor?

11 A We were not.

12 Q You -- in responding to Mr. Warren about this other  
13 individual, you talk about wanting to get them right -- "Could  
14 they meet us right here, and I want them to see my face." Why  
15 did you say that?

16 A That's me using an excuse that I was scared that when  
17 they entered that house and I could possibly be shot and  
18 killed in that house since I knew violence was going to occur  
19 since I'd been told the day before there was going to be a  
20 shootout.

21 THE COURT: So that's you trying to get them to  
22 believe that?

23 THE WITNESS: That's my excuse wanting me to be able  
24 to have that individual see my face because I understood --

25 THE COURT: But it's an excuse because it's what --

1 it's just what you're telling them; it's not true?

2 THE WITNESS: Correct. It's based upon what he had  
3 said as well.

4 THE COURT: Okay.

5 THE WITNESS: Yes, ma'am.

6 Q (By Mr. Stevens) All right. So your -- your excuse to  
7 them for trying to get these other individuals there is you're  
8 concerned you could get shot in the face --

9 A Correct.

10 Q -- if they don't see you and know you?

11 A Correct.

12 Q All right. You continued then to discuss this home  
13 invasion robbery?

14 A That is correct.

15 MR. STEVENS: J5-2, please.

16 (Video played.)

17 Q (By Mr. Stevens) Mr. Warren indicates they got the heat,  
18 they got the ammunition. Heat -- in your experience, would  
19 that be a reference to a firearm?

20 A Yes, sir.

21 Q And there's a reference to the other guys he's referred  
22 to having those, is that right?

23 A That is correct.

24 Q Did that turn out to be the case in this particular case?

25 A I don't know if those individuals had guns. I know they

1 had guns.

2 Q All right. Mr. Warren indicates there, "I'm coming in.  
3 I'm going to tell them what to do." Coming into -- at that  
4 point, what are you -- what structure are the two of you  
5 talking about?

6 A We're talking about the robbery.

7 Q Again, on -- at this location on June 5th, other agents  
8 were conducting video surveillance of this meeting?

9 A That's correct.

10 MR. STEVENS: J5-3, please.

11 (Video played.)

12 Q (By Mr. Stevens) This is at the car wash?

13 A Yes, sir.

14 Q Who is the individual on the right in the white T-shirt?

15 A That's the Defendant Warren.

16 Q After this meeting on the car wash, did you offer to take  
17 Mr. Washington and Warren and Twitty to the trap car?

18 A Yes, I did.

19 Q All right. And why did you decide to do that at this  
20 time?

21 A Well, I asked them prior to going to the car wash, "Are  
22 you guys ready to go?" And they told me they were ready to  
23 conduct the robbery. So at that point, I decided to go to the  
24 next location in order to take them to the location to conduct  
25 the arrest and also in an attempt to identify that fourth



1 individual if I could.

2 Q All right. How would you go about doing that by moving  
3 to another location?

4 A The -- we were at -- the first location was a car wash,  
5 and the second location I was taking them to was a -- was a  
6 business area, which was approximately about a half a mile  
7 away, and there was a series of turns that we were going to  
8 have to make in order to get to that location. So it was my  
9 hope that the surveillance units would be able to identify --  
10 if there was a -- another individual -- would be able to  
11 identify that car as we were making those turns following us.

12 Q Let me show you if I could, Agent Zayas, again,  
13 Government's Exhibit 8, the map. Could you show the Jury  
14 briefly, if you would, the route that you took from the car  
15 wash at Meramec and Gravois on June 5th to the arrest location  
16 on June 5th?

17 A Yes, sir. As I came out of the car wash, I made a  
18 left-hand turn. I traveled over some railroad tracks and then  
19 came to a stoplight.

20 Q Let me stop you there. What vehicle were you in?

21 A I was driving an undercover vehicle, which was a pickup  
22 truck.

23 Q Who was in the car with you? Anyone?

24 A Washington.

25 Q Robert Washington?

1 A Yes, sir.

2 Q And where were Mr. Warren and Mr. Twitty at that time?

3 A They had returned to the blue Cadillac and were following  
4 me in the blue Cadillac.

5 Q They were following you?

6 A That is correct.

7 Q Did they make that turn with you and go over the train  
8 tracks?

9 A Yes, they did.

10 Q All right. Will you continue, please?

11 A I then approached a stoplight. I sat at the stoplight  
12 for a period of time and then veered to the right, up in this  
13 location.

14 Q All right. Did they continue to follow in the blue  
15 Cadillac?

16 A Yes, sir, they did.

17 Q And then where did you go?

18 A Upon reaching where the road came perpendicular to this  
19 road, I then had to make another right, a slight right, and  
20 then an ultimate right-hand turn to come down the road where  
21 the business area was located.

22 Q And that was the arrest location?

23 A Ultimately, I had to make another right-hand turn, two  
24 right-hand turns into the business location.

25 Q And at each of those turns, did Mr. Warren continue to

1 follow in his blue Cadillac?

2 A Yes, he did.

3 Q He was driving?

4 A Yes, he was.

5 Q He followed you all the way to the arrest location?

6 A Yes, sir.

7 Q You mentioned that Mr. Washington was in your vehicle  
8 with you, and during the course of this drive from the car  
9 wash to the arrest location, did you have a conversation with  
10 Mr. Washington?

11 A Yes, sir, I did.

12 MR. STEVENS: J5-4, please. This is from  
13 Government's Exhibit 7.

14 (Video played.)

15 Q (By Mr. Stevens) Is that a reference to the trap car?

16 A Yes, it is.

17 (Video played.)

18 Q (By Mr. Stevens) Agent Zayas, Mr. Washington refers to "a  
19 lick like this."

20 MR. JIMERSON: Objection. May we approach on this,  
21 Your Honor?

22 THE COURT: You may.

23 (A bench conference was held on the record and outside of  
24 the hearing of the Jury as follows:)

25 MR. JIMERSON: Your Honor, I object to any comments

1 about what Mr. Washington made in this statement. This is all  
2 about Mr. Washington's statements, and basically, he's --  
3 apparently, he's not here. I'm going to say it's hearsay at  
4 this point, Judge, but more in particular, it has nothing to  
5 do with the charge that he's going against my client with, so  
6 to have him testify about what Washington said or thought or  
7 did is totally irrelevant and prejudicial.

8 MR. STEVENS: Judge, it's a statement in furtherance  
9 of the conspiracy. Obviously, I think, at this point, we've  
10 obviously established a conspiracy involving Mr. Washington  
11 and Mr. Warren, and this conversation with Mr. Washington is  
12 a -- it's a coconspirator's statement. All I'm going to ask  
13 him is based on his experience what does "a lick" mean in  
14 street vernacular.

15 THE COURT: Yeah, I think that there is evidence from  
16 which a conspiracy could be alleged, so I think under *Bell*  
17 it's appropriate to do this as -- you know, to allow this in  
18 at this point, so --

19 MR. STEVENS: Thank you, Judge.

20 THE COURT: -- I will overrule the objection.

21 MR. JIMERSON: Yes, ma'am.

22 MR. STEVENS: That's the single question I'm going to  
23 ask about this tape, Judge.

24 THE COURT: Okay.

25 MR. STEVENS: Thank you.

1 (The following proceedings were held within the hearing  
2 of the Jury.)

3 Q (By Mr. Stevens) Agent Zayas, Robert Washington referred  
4 to "a lick like this"; based on your experience, what would  
5 that be a reference to?

6 A "Lick" is street vernacular for robbery.

7 Q You -- at the end there, you refer to, "It's a  
8 landscaping lot. There's the car." You were arriving at the  
9 landscaping lot at that time?

10 A Yes, sir.

11 Q And that's the prearranged arrest location of June 5th of  
12 2013?

13 A Yes, sir.

14 Q And, again, you and Mr. Washington were in your vehicle?

15 A That's correct.

16 Q All right. And was this location also in the city of  
17 St. Louis, within the Eastern District of Missouri?

18 A Yes, sir.

19 Q And is that fair for all of the locations we've referred  
20 to here today?

21 A That's correct.

22 Q All right. Let me ask you this. Will you tell the Jury  
23 how you decided to -- on this particular arrest location and  
24 why to arrest these individuals there?

25 A Why did we -- we decided to arrest them there because the

1 location has a degree of isolation. It afforded us an  
2 opportunity to be able to secrete our Special Response Team  
3 into a location that as we pulled in it wouldn't be visible to  
4 anyone, and it also afforded us a location that would be safe  
5 for us, for the public as well as the individuals getting  
6 arrested.

7 Q All right. Now, was there an actual stash house on this  
8 lot?

9 A No, sir.

10 Q All right. And was there a particular reason why you  
11 wouldn't wait for them to actually enter a stash house or to  
12 get on the street close to the stash house to make an arrest  
13 at that time?

14 MR. JIMERSON: Your Honor, I'm going to object at  
15 this point. It points to all speculation as to what he would  
16 think.

17 THE COURT: Overruled.

18 Q (By Mr. Stevens) You may answer.

19 A Yes, sir. Because of the level of violence that it was  
20 going to take to commit this robbery, the propensity for me  
21 being shot or killed during that attempted robbery or that  
22 robbery was too high.

23 Q If you were to go all the way to a stash house?

24 A That's correct.

25 Q And so -- and your purpose is to minimize the danger, is

1 that fair?

2 A That is correct.

3 Q All right. And that's how you picked this particular  
4 arrest location?

5 A Yes, sir.

6 Q All right. After arriving on that lot -- you've referred  
7 now several times to a trap car -- did you in fact show a trap  
8 car to Mr. Warren and the other individuals?

9 A Yes, sir.

10 Q And when you pulled onto the lot there, before showing  
11 them that car, you're in your pickup truck; you've indicated  
12 Mr. Warren is in his blue Cadillac. Is there a third car that  
13 pulls onto the lot there?

14 A Yes, sir. That's the vehicle containing the two  
15 confidential informants.

16 Q And that's a small silver car?

17 A That is correct.

18 Q And were there surveillance cameras? In addition to  
19 having the Special Response Team and SWAT team at this  
20 location, were there surveillance cameras set up around the  
21 lot?

22 A Yes, sir.

23 Q Where they capture you pulling onto the lot and the other  
24 individuals as well?

25 A That's correct.

1 MR. STEVENS: J5-5, please.

2 THE COURT: And which exhibit is this in?

3 MR. STEVENS: This is still Government's Exhibit 7,  
4 Your Honor.

5 THE COURT: Okay.

6 MR. STEVENS: June 5, 2013.

7 (Video played.)

8 Q (By Mr. Stevens) Mr. Warren was in the white T-shirt  
9 there?

10 A Correct, actually, in the driver's side of the blue  
11 Cadillac.

12 Q All right. And as you were -- you were there with  
13 Mr. Warren that day. As you were showing them the trap car,  
14 did they appear to follow what you were showing them?

15 A Yes, sir.

16 Q Including Mr. Warren?

17 A That's correct.

18 Q All right. When you offer to Mr. Warren to show him the  
19 trap car, he responds, "He is going to be driving." Do you  
20 recall that?

21 A Yes, sir.

22 Q Did he motion towards anyone or indicate who he was  
23 talking about?

24 A Indicated toward Washington.

25 Q All right. "He is going to be driving," is that right?



1 A Yes, sir.

2 Q After you showed them the trap car, you shushed everyone  
3 and reached for your pocket. What were you retrieving there?

4 A My cellular telephone.

5 Q Okay. And why were you doing that?

6 A What I was doing was I was giving a signal to our Special  
7 Response Team to commence with the arrest, so that was my  
8 signal that I was prepared for the arrest to commence.

9 Q And who was that call supposed to be from as far as you  
10 were indicating to the other individuals on the lot?

11 A That call was coming from the stash house, providing me  
12 the exact address where we were supposed to go to for the  
13 robbery.

14 Q All right. But it was actually a signal to the SRT?

15 A That is correct.

16 Q All right. When you take that call, what language do you  
17 speak when you answer the phone?

18 A I speak in Spanish.

19 Q All right. And why do you do that?

20 A In order to add realism to the -- to what we're talking  
21 about.

22 Q As if you're talking to Mexicans at the stash house?

23 A Yes, sir, correct.

24 MR. STEVENS: J5-6, please.

25 MR. JIMERSON: Your Honor, I'm going to object to

1 that and ask that it be stricken from the record in terms of  
2 what his realism is and as to talk Spanish from the stash  
3 house. There's been no evidence of that.

4 THE COURT: Yeah. Overruled. I mean I think the  
5 Jury understands now that there is no stash house, there is no  
6 cocaine, there is no Mexican drug dealer.

7 MR. STEVENS: There are no Mexicans.

8 THE COURT: Right.

9 MR. STEVENS: Yes.

10 THE COURT: So, okay, go ahead.

11 MR. STEVENS: Thank you, Judge. J5-6.

12 (Video played.)

13 Q (By Mr. Stevens) Agent Zayas, at the beginning of that  
14 tape, obviously, you take the phone call you referred to, and  
15 then there's a loud bang. Did you hear that?

16 A Yes, sir.

17 Q Can you explain to the Jury what that was?

18 A That's commonly referred to as a diversionary device, and  
19 what it does is it causes a -- when you toss it, it causes a  
20 large light and a large sound, so what it does is it causes  
21 you to look in that direction and allows our Special Response  
22 Team time to come from the other direction, so it causes a  
23 diversion to allow them time to get into position to make the  
24 arrest.

25 Q At the end of that video, we see Mr. Warren and

1 Mr. Washington and Mr. Twitty running across the lot there.

2 Were they apprehended on the lot?

3 A Yes, sir.

4 Q Did any of them leave the lot in any way?

5 A No, sir.

6 Q They were arrested right there?

7 A That's correct.

8 Q Were you still wired up at the time of the -- of the  
9 arrest?

10 A Yes, sir.

11 Q All right. And would the camera that you had on you at  
12 that time show your point of view of this, this portion of the  
13 video?

14 A Yes, sir.

15 MR. STEVENS: J5-7, please.

16 (Video played.)

17 Q (By Mr. Stevens) Agent Zayas, do you see the Daryl Warren  
18 that you met with on June 3rd, 4th, and 5th in the courtroom  
19 here today?

20 A Yes, sir.

21 Q Will you identify him by where he's located and what he's  
22 wearing?

23 A Yes, sir. He's seated at the defense table. He's  
24 wearing a sweater with a collared shirt underneath it, maroon  
25 in color sweater.

1 MR. STEVENS: Thank you. Your Honor, may the record  
2 reflect that the witness has identified the Defendant Daryl  
3 Warren?

4 THE COURT: The record will so reflect.

5 MR. STEVENS: Thank you, Your Honor. I have no  
6 further questions for this witness.

7 THE COURT: You may cross-examine.

8 MR. JIMERSON: Thank you, Your Honor. Thank you.

9 CROSS-EXAMINATION

10 BY MR. JIMERSON:

11 Q Is it Detective or Officer Zayas?

12 A Special Agent Zayas.

13 Q Special Agent. Okay. Special Agent Zayas, how you doing  
14 today, sir?

15 A Good, sir. Thank you.

16 Q All right. Now, you're a Special Agent, but you're not  
17 assigned -- well, you're not from St. Louis, is that correct,  
18 sir?

19 A That's correct, sir.

20 Q In fact, you testified that you're actually from the DC  
21 area?

22 A I'm assigned to Washington.

23 Q Okay. All right. Now, you also said that you had some  
24 confidential informants, is that correct?

25 A Yes, sir.

1 Q Were they under you?

2 A Yes, sir. I was -- I was directing them in this  
3 particular investigation.

4 Q Okay. How many under -- what's a confidential informant?

5 A A confidential informant is an individual that comes  
6 forward to law enforcement to provide information either for  
7 assistance in a particular case to lower his sentence or for  
8 monetary reasons.

9 Q Okay. And in this situation, it was for monetary  
10 reasons, isn't that correct, sir?

11 A Yes, sir.

12 Q In fact, these informants, you've worked with for a bit,  
13 is that correct, sir?

14 A Yes, sir, that would be correct.

15 Q Okay. How much money have you paid these confidential  
16 informants, sir, to work with you?

17 A On this particular investigation?

18 Q Yes, sir.

19 A I don't recall. I know that that paperwork -- we have  
20 documentation where we pay them, and I believe it was turned  
21 over to the defense --

22 Q Okay.

23 A -- but I don't know that number specifically.

24 Q Well, you believe it was turned over to the defense. I'm  
25 asking you what you know. Do you know how much they were

1 paid?

2 A I think it might have been 22 or 23 hundred dollars.

3 Q Okay. And that was to -- originally, to first find you,  
4 I guess, drug dealers in St. Louis, is that correct, sir?

5 A To identify individuals that are involved in criminal  
6 activity in the St. Louis area.

7 Q Well, let's talk about that because when you first said  
8 that, Special Agent Zayas, you said basically you came here  
9 because, I guess, a drug task force or something like that?

10 A No, sir. Violent crime.

11 Q Okay. But you were focusing on drug crimes, is that  
12 correct, sir?

13 A No, sir. Violent crime. Violent crime is associated  
14 with drug crimes.

15 Q Okay. Well, when you first got here, though, you wasn't  
16 focused on home invasions, is that correct, sir?

17 A Pardon?

18 Q You were not focusing on home invasions?

19 A No, sir. We were focusing on the full gamut of violent  
20 crime.

21 Q Well, I mean I'm going to take issue with you on that  
22 because you said that at some point, when Mr. Stevens asked  
23 you, that your focus changed. Do you recall that?

24 A It changed because it started initially as a drug case  
25 and then it moved into -- the drug case was still there. It

1 moved into the home invasion case.

2 Q Okay. But let's see straight here. The drug case never  
3 involved Mr. Darren -- Mr. Warren, is that correct, sir?

4 A You mean where the purchases were made or the --

5 Q No. We're talking about, yeah, the first, your initial  
6 drug buys, purchases. Never made with Mr. Warren, is that  
7 correct, sir?

8 A Yes, sir, that's correct.

9 Q In fact, you never -- nothing was ever sold to him;  
10 nothing was ever purchased from him, is that correct, sir?

11 A That's correct, sir.

12 Q Okay. Now, you made your informants, though, or some  
13 people might call them snitches -- they were in fact -- you  
14 know, they were making purchases from Mr. Robert Washington,  
15 is that correct, sir?

16 A That's correct.

17 Q Tell the Jury who Robert Washington is, sir.

18 A Robert Washington is the individual that's in the center  
19 of those, those three photographs.

20 Q Tell me -- tell them what he is to Mr. Warren. Do you  
21 know?

22 A I believe he's his cousin.

23 Q His cousin. Okay. So -- so you were dealing with him  
24 about drug cases and buys and those things, is that correct,  
25 sir?

1 A Drug cases and the home invasion.

2 Q In fact, you had your snitches in fact buy drugs from  
3 Mr. Washington in about 14 -- on two occasions, is that  
4 correct, sir?

5 A No. Well, they purchased an ounce of cocaine from  
6 Washington on May the 21st, 2013, and then I purchased an  
7 ounce of cocaine in the presence of the confidential  
8 informants from Washington on May the 23rd.

9 Q So it was two sales?

10 A Two sales, yes, sir.

11 Q And each sale cost -- you paid approximately how much  
12 for --

13 A \$1,400.

14 Q For each sale, is that correct?

15 A That is correct, sir.

16 Q Okay. Now, one thing that, you know, you kept mentioning  
17 here and I was a little confused about -- when you were  
18 talking about, "Are we straight? Are we straight?" and you  
19 were kind of using street language, is that correct?

20 A Yes, sir.

21 Q Okay. Why didn't you just say, for clarity, "You  
22 understand what I'm asking you here?" Why didn't you use that  
23 kind of language?

24 A Because, sir, I'm in their environment. I'm in an  
25 environment of individuals who sell drugs, individuals who are



1 committing robberies, so I'm speaking their language.

2 Q Are you trying to say that people that you believe --  
3 that are -- that are -- that commit violence only talk a  
4 certain way?

5 A No, but we speak in -- we speak in certain slangs. For  
6 instance, if you're in the football community, you're going to  
7 speak in football terms. If you're in a baseball community,  
8 you're going to speak in baseball terms.

9 Q All right.

10 A If you're in a drug community or robbery community,  
11 you're going to speak in those terms.

12 Q "Are we straight?" -- isn't that meant for people that  
13 are in the drug community? Is that what you're saying? "Are  
14 we straight?" -- that's meant for people on the streets?

15 A No. That can also be said in another -- in another  
16 area --

17 Q Okay.

18 A -- but in particular, that's the kind of language that's  
19 spoken in that particular type of activity.

20 Q Well, what about English? How about -- do you -- you  
21 know, you're a law enforcement officer. You're trying to get  
22 someone to do something, and you're trying to make it clear to  
23 the Court or to the justice system that they understood, is  
24 that correct?

25 A Yes, sir.

1 Q Why didn't you use the word in English, "Are we clear?  
2 Do you understand what we're doing here?"

3 A Because, sir, again, I'm going to speak in their language  
4 and I'm going to tell them three times exactly what I'm saying  
5 and offer them an opportunity to back out if they so desire.

6 Q Well, let's speak in our language. You're really  
7 guessing what their language is. You don't know really  
8 whether he understood that or not, do you?

9 A No, sir. I know that he understood what I said.

10 Q All right. You're guessing, basically, that -- that --  
11 are we clear -- that he understood perfectly what you were  
12 trying to set him up to do, is that correct?

13 A That he understood --

14 Q Yeah.

15 A -- that he was going to go commit a robbery, I completely  
16 stand behind that, yes, sir. He understood it.

17 Q Well, let me ask you this. There was no stash house, is  
18 that correct, sir?

19 A That is correct, sir.

20 Q There was no -- so -- so when you told him that, that was  
21 a lie, is that correct?

22 A Yes, sir, it was untrue.

23 Q There was no Mexican cartel, is that correct?

24 A That is correct.

25 Q And I respect your Spanish heritage, sir, but when you're

1 using all those words, your Spanish words, for realism,  
2 basically, you was using that for realism to pull him into  
3 thinking something, is that correct, sir?

4 A For him to believe what I was telling him, yes, sir.

5 Q All right. In addition, in addition to that, there was  
6 no drugs ever sold or found in a stash house, is that correct?

7 A That is correct.

8 Q Okay. So all these things that you were leading him up  
9 to never in fact ever existed, is that correct?

10 A That is correct.

11 Q In fact, I want to show you some clips. We've looked at  
12 a lot of them, okay, but you were all -- and if we have to,  
13 we'll go look at them again, but you were in fact -- you were  
14 saying that he was agreeing with you and smiling with you, but  
15 isn't it true that you were all in his face in his car, making  
16 all type of hand gestures in front of him?

17 A We also were in a vehicle.

18 Q Okay.

19 A So unless I was standing outside the car, I would be in  
20 pretty close proximity to him.

21 Q Okay. But when -- but when you're, "Are we straight,  
22 man," using all kind of hand gestures, and, you know, he's  
23 kind of leaning back from you, is that correct?

24 A No, sir.

25 Q Let's take a look at it again.

1 A Okay.

2 MR. JIMERSON: It was -- excuse me. Mr. Stevens, you  
3 may have to help me with this. It was on the first clip where  
4 he first met Mr. -- allegedly met Mr. Warren.

5 MR. STEVENS: That would be --

6 MR. JIMERSON: Could you play that?

7 MR. STEVENS: J3-2.

8 THE COURT: Oh, we need to change the system over for  
9 the computer, I think. Yeah, you've got it. There you go.

10 (Video played.)

11 MR. JIMERSON: Stop it right there. Can we stop it  
12 right there?

13 Q (By Mr. Jimerson) Was he smiling then, sir?

14 A Not right there, he's not smiling.

15 Q Okay. Let's go. In fact, you're waving your hands and  
16 all those things right off the bat, isn't that correct?

17 A Well, I mean that's the way I talk, sir.

18 Q That's the way you talk, but isn't it in a fast manner  
19 and making someone move backward at this point?

20 A Not moving back. When he entered the car -- if you roll  
21 the tape back, when I enter the car, he's in that position.

22 MR. JIMERSON: I didn't ask you to roll it back.  
23 Let's keep going.

24 (Video played.)

25 MR. JIMERSON: Stop it.

1 Q (By Mr. Jimerson) All up to this point -- again, I don't  
2 want to -- the Jury can look at this, but you're saying he's  
3 smiling, but we're halfway through this whole thing here, and  
4 there's no smile at this point, isn't that correct?

5 A Well, he asked -- the Government asked me a specific --

6 Q If -- if --

7 A If I may answer the question, sir.

8 Q No, you answer my question.

9 THE COURT: Hold on. Wait a minute. Yeah, you've  
10 made your point. Ask him a new question.

11 MR. JIMERSON: Sure. I'll move on, Judge.

12 Q (By Mr. Jimerson) Now, you talked about this home focus  
13 change. Who changed that focus? I mean was there some higher  
14 up hierarchy in your -- in your division that changed that  
15 home -- that focus?

16 A No, sir, it didn't change the focus. It's just the case  
17 went into -- the case was still going in that direction of the  
18 drugs; it just moved to the home invasion section.

19 Q Okay. How long were you in St. Louis before?

20 A I was in St. Louis the -- we actually started in April,  
21 and I was in St. Louis 30 days prior.

22 Q Okay. And you focused on these four people, these three  
23 people -- Michael Twitty, Robert Washington, and Daryl  
24 Warren -- from what point in time?

25 A When this investigation was initiated, which was May the

1 21st, year 2013. I met Washington -- actually, the informants  
2 met Washington on the 21st. I met with Washington on the  
3 23rd. On both those occasions, we bought cocaine, and then I  
4 met Washington again on May the 29th, which is where we  
5 initially discussed the home invasion. That's when he told me  
6 that he had individuals -- actually, he told me that on the  
7 23rd and on the 29th, that he had individuals that were  
8 involved in this type of activity.

9 Q Okay. Special Agent, do you -- you -- you've talked  
10 about phone calls and those things. Do you recall that, when  
11 Mr. Stevens asked you that?

12 A Yes, sir.

13 Q Isn't it true that Mr. Warren never called you?

14 A That's correct.

15 Q Isn't it true you never called Mr. Warren?

16 A That is correct.

17 Q In fact, you looked at a lot of phone logs about phone  
18 calls, but isn't it true if you go back and look at those  
19 phone logs -- and, again, I'm asking you to remember it. If  
20 not, we'll put it up here. If you go back and look at the  
21 phone logs, very few of those phone calls came from Daryl  
22 Warren, isn't that correct, sir?

23 A From Daryl Warren to who?

24 Q Very few -- well, you're looking at Daryl Warren and  
25 Robert Washington. Very few of those phone calls came from

1 Darren Warren to Robert Washington, is that correct, sir?

2 A Yes, sir, I believe so. I believe you're correct.

3 Q Okay. So, in fact, you know they're cousins, right?

4 A Yes, sir, they're cousins.

5 Q So they made a phone call to each other. You don't know  
6 what they talked about over the telephone, is that correct?

7 A That is correct.

8 Q So to sit up here today in front of this Jury and say,  
9 well, they talked to each other three or four times in one  
10 night, therefore, they must have been talking about drugs,  
11 that's a big jump, isn't it, sir?

12 A Well, I know a couple of those phone calls were about the  
13 robbery because I was standing outside the window when Robert  
14 Washington was calling Warren, giving him directions to  
15 arrive, so we could discuss the robbery. So I know that those  
16 conversations were about the robbery.

17 Q Did you hear Mr. Warren's voice on the telephone, sir?

18 A No. He told me, "I'm calling my cousin," and then he  
19 arrived.

20 Q That's not my question. My question -- did you hear  
21 Mr. Warren's voice on that telephone?

22 A No, sir, I did not.

23 Q In fact, you're saying you knew it was him, but  
24 basically, you can't pinpoint a time on there that he was  
25 calling that you were standing outside that telephone booth or

1     whatever, is that correct?

2     A     I couldn't.

3     Q     Okay. Now, so, in other words, other than the fact that  
4     you thought he may -- Robert Washington may have been talking  
5     to Mr. Warren about this drug -- fake stash house, fake cartel  
6     that you're talking about, basically, you don't know any of  
7     the conversation, do you, is that correct?

8     A     I know the conversation that was had with that phone  
9     number when he was standing in front of me. Now, after that,  
10    no, I don't know.

11    Q     Okay. So -- so if he called -- I'm sorry. If he called  
12    later that night, he could have been talking about, "Let's go  
13    get a burrito, or let's go get a hamburger," is that correct?

14    A     I have no idea what they were talking about.

15    Q     Not necessarily, "Let's go rob a fake stash house," is  
16    that correct, sir?

17    A     I don't know what they were talking about.

18    Q     Okay.

19           THE COURT: Mr. Jimerson, you keep moving away from  
20    the microphone.

21           MR. JIMERSON: I'm sorry.

22           THE COURT: I'd like you to -- you can pull that  
23    microphone over there if you want, so it's -- you know, you  
24    can move around.

25           MR. JIMERSON: I have a habit of wandering, Your



1 Honor, and I'm sorry.

2 THE COURT: Yeah, I know. So I just -- I need you in  
3 the mike.

4 MR. JIMERSON: I'm sorry.

5 Q (By Mr. Jimerson) So I think we're clear on the telephone  
6 logs that, basically, at least you think that very few calls  
7 came from Mr. Warren to Mr. Washington, is that correct?

8 A Yes, sir.

9 Q Okay. All right. And we're clear on the phone calls; at  
10 least with the majority of them, you don't know what the  
11 conversation was about, is that correct?

12 A That's correct.

13 Q You're testifying that you -- maybe you stood by a phone  
14 booth maybe or something and maybe heard Mr. Washington call  
15 what you think was Mr. Warren, okay, but you don't know  
16 necessarily whether it was him or not on the other end?

17 A Well, I know he was -- he called that number and he was  
18 giving that guy directions to arrive there and shortly  
19 thereafter --

20 Q Well, my question --

21 A -- Warren arrived.

22 Q I'm sorry. My question is simple. You don't know  
23 whether Mr. Warren was on the other end of the phone call, is  
24 that correct?

25 A That's correct.

1 Q Okay. Now, Mr. Warren told you -- when you first met  
2 him, you were, you know, again, in that -- you say you talk --  
3 that's the way you talk, hands fast and those things, and I  
4 understand that, you know, but you were saying -- you were  
5 saying things to him, "I got a girlfriend," right? You said  
6 that, right? "I have a woman" or something?

7 A I don't believe I discussed it on June the 3rd. I  
8 believe that discussion was on June the 4th.

9 Q Didn't you create a sense of urgency there, you know, in  
10 what you had to do? Didn't you initially tell him, "We've got  
11 to do this now. I've got to get my girlfriend out of here.  
12 I've got to -- you know, because I've got to move her and all  
13 that"? Did you not tell him that at first?

14 A No, sir. I told him that the next day, on June the 4th,  
15 not June the 3rd.

16 Q Isn't it true, Special Agent, that Daryl Warren -- I mean  
17 that Daryl Warren told you he didn't want to participate in  
18 this, sir?

19 A Absolutely not.

20 Q And it's not true that he said that?

21 A Absolutely not.

22 Q Okay. In fact, on that trap car, he said he wasn't  
23 getting inside that trap car, is that correct, sir?

24 A No, I don't remember him saying that.

25 Q Did he volunteer to drive it?

1 A No. Are you talking about getting into it to look when  
2 I'm opening the trap, or are you talking about driving it to  
3 go commit the robbery?

4 Q Driving it to commit the robbery.

5 A No. He simply said that Washington was going to be the  
6 driver.

7 Q All right. And he also said, when you guys were at the  
8 car wash, right, that he had no tools? Can you explain that  
9 to the Jury since we're talking street language -- he had no  
10 tools?

11 A "Tools" are vernacular, street vernacular, for firearms.

12 Q In fact, you even asked him what did he mean by that,  
13 right?

14 A Correct.

15 Q Okay. So he's telling you he doesn't have any tools.  
16 Isn't he saying that "I'm not participating in this. I don't  
17 have any tools"?

18 A No. He said that he was going to commit the robbery but  
19 that the guns were in a fourth individual's car.

20 Q Right, they were in somebody else's car, but he don't  
21 have them, right?

22 A He said -- yes, he said they were going to commit the  
23 robbery but the guns were in the fourth guy's car, which  
24 wasn't true.

25 Q Now, did you ever see a fourth person's car?

1 A No.

2 Q Okay. Did you ever inquire about it?

3 A Yes, sir.

4 Q Okay. Now, did you know about a fourth person's car?

5 A I knew about it when he told me.

6 Q So you knew that was a lie, too, right?

7 A No, I don't.

8 Q All right. So you basically got one person, you, telling  
9 lies to them, and Mr. Warren is telling you a lie basically  
10 based on what he believed you're trying to get him to do,  
11 isn't that correct, sir?

12 A No, sir.

13 Q You're telling him to go to a fake stash house; you're  
14 telling him to go pick up some fake dope; you're telling him  
15 about some girlfriend that you've got to move out of the state  
16 right away because you're going to rob these Mexican cartel  
17 people, and he's telling you a lie, saying, "Okay, I don't  
18 have any guns"?

19 A That's correct.

20 Q Okay. Right? So both people are lying to each other, is  
21 that correct?

22 A About that, yes, sir.

23 Q Okay. In fact, Mr. Warren never knew the whereabouts of  
24 a stash house; it didn't exist, but you never told him, right?

25 A Correct. I was getting the address when the phone call

1 happened at the end, when the arrest occurred.

2 Q You were getting the address? What do you mean by you  
3 were getting the address when something never existed?

4 A Because in his mind he believed that I was going to be  
5 called from the stash house and provided the address, and at  
6 that point, I had a very short period of time, which I told  
7 him at the car wash, so when I made that -- when I was getting  
8 that phone call, he believed that I was at that point getting  
9 the address to the stash house.

10 Q Okay. Now, isn't it true that Mr. Warren basically went  
11 with you on that day because -- do you know Michael Twitty?

12 A No, sir. I mean I met him, obviously --

13 Q Yeah.

14 A -- but, no, I don't know him personally.

15 Q That's what I'm getting at. I'm sorry. So isn't it true  
16 that Mr. Warren was going with him just to make sure that he  
17 was okay?

18 A Absolutely not.

19 Q Now, who is Michael Twitty by the way?

20 A I would assume a friend of Warren's.

21 Q Yeah. Would you assume he's a good friend of Mr. Warren?

22 A They were going to do a robbery together, so I would  
23 assume they're friends.

24 Q Now you're taking a joke. Now you're telling a joke.

25 A No, sir. I'm exactly serious. He -- Warren brought

1 Twitty into the robbery.

2 Q So you're trying to say -- and I hope with some levity --  
3 if they're going to do a robbery together, they've got to be  
4 good friends; that's -- that's your belief, sir?

5 A Well, sir, you're going to go into a house; you're going  
6 to kill people in a house; I would imagine you're going to  
7 trust the person you're going to go commit the murder with.

8 Q Okay. Is that another example or is that a fact?

9 A Mr. Warren said there's going to be a shootout at the  
10 house.

11 Q Supposedly --

12 A If I may finish. If there's going to be a shootout,  
13 obviously, the results of that shootout may be death.

14 Q Let's talk about the facts. The fact is that there's no  
15 shootout. The fact is there's no house. The fact is there's  
16 no cocaine. In fact, there was no cartel. Fact, you were  
17 lying to him about this and you induced him to do this; isn't  
18 that a fact, sir?

19 A That is not a fact.

20 Q Okay.

21 A He decided to do this.

22 Q Now, did you ask him on the last day, "Do you want to get  
23 out of this, man?" Did you say anything to him on the last  
24 day?

25 A I said, "Are you guys" -- I said something to the effect,

1 "Are you guys good for this? Are you guys ready to do this?"

2 Q So is that street talk again?

3 A No. That's asking somebody, "Do you want to do this?"

4 Q In fact, you had an agenda, isn't that correct, sir? You  
5 flew people in from Washington, DC, in order to ensnare this  
6 man into this event, is that correct?

7 A Absolutely not.

8 Q They came in from DC, right? They came in from another  
9 part of the country just to do the special tactical thing,  
10 right?

11 A If he decided to do the robbery.

12 Q Okay. Okay. And there again, when they came in, there  
13 was nothing there? There was no -- I mean we've said this 100  
14 times already, but there was no drugs, dope, anything, right?

15 MR. STEVENS: Your Honor, I'm going to object.

16 It's -- it's been asked and answered.

17 THE COURT: Yeah, it has been asked and answered.

18 MR. JIMERSON: Yes, ma'am. Okay.

19 Q (By Mr. Jimerson) So when your tactical people came in,  
20 they found nothing other than some guns that they found in the  
21 car that you're saying that Mr. Warren had, is that correct?

22 A And gloves.

23 Q Okay. Okay. Did you -- did you do anything with those  
24 gloves in particular?

25 A I didn't. They took them into evidence.

1 Q Okay. And so what? You found gloves in my car. So  
2 what?

3 A Well, it's -- they're going to go commit a robbery.  
4 There's guns with ammunition, and there's gloves and it's  
5 June, so I would assume they're going to use them for the  
6 robbery.

7 Q Well, that's your assumption, but he could be digging a  
8 ditch, too, right, sir?

9 A Well, they told me they were going to go do a robbery,  
10 so -- and they've got guns and they've got gloves, so . . .

11 Q And what I'm getting at is that you're making a lot of  
12 assumptions here that you want this Jury to believe about  
13 things that you find and, therefore, they must do this.  
14 You've said that over and over again in terms of how you  
15 speculated about what people must be thinking because you want  
16 to escalate the level of violence and all that. I'm asking  
17 you this question. Aren't you making a lot of assumptions  
18 when you come to try to get someone to try to -- to try to get  
19 someone to go do something, sir?

20 A Absolutely not, sir. I'm looking at their actions, I'm  
21 looking at their words, and I'm looking at the evidence that's  
22 recovered.

23 Q Now, is it true that Mr. Warren told you he doesn't feel  
24 comfortable doing this?

25 A No, sir.



1 Q He never said that to you?

2 A Nope.

3 Q Okay. Isn't it true that he said he never wanted to go,  
4 he doesn't want to do this?

5 A Absolutely not.

6 Q And you told him at that point, "I've got to get my  
7 girlfriend out, I need to know." You put him in a hurry-up  
8 mode to do that?

9 A Absolutely not. That discussion was done on June 4th.  
10 He could have walked away. The robbery wasn't until the next  
11 day.

12 Q My question is, didn't you put him in a hurry-up mode to  
13 do something, sir?

14 A Absolutely not.

15 Q Okay. I asked you about the phone call, so I won't  
16 belabor that. "Lick" was used by Robert Washington?

17 A Yes, sir.

18 Q Okay. You said that's a term used by robbers or  
19 something?

20 A It's -- it's -- "lick" means robbery.

21 Q All right. You looked at Robert Washington's record,  
22 right?

23 A No, sir.

24 Q Okay. Did you know Robert Washington was a robber, sir?

25 A I don't recall, sir. He might be. I don't know. I

1 don't recall.

2 Q So you said, you know, he was using the term "lick", so,  
3 therefore, he must have been a robber because he was using  
4 that kind of term. Mr. Stevens asked you that question, but  
5 you don't know whether or not in fact that that was used by  
6 Mr. Warren, is that correct, that it was meant that way? I  
7 mean Mr. Washington, that he meant it that way.

8 A I don't follow your question.

9 Q Sure. Mr. Washington used the term "lick", and you're  
10 saying that in street vernacular that means robbery, right?

11 A Yes, sir.

12 Q Okay. But you don't know in fact that he meant that, is  
13 that correct, sir?

14 A No. I know he did because we were talking about a  
15 robbery.

16 Q That could have meant a Tootsie Roll pop, right?

17 A No. It was a robbery.

18 MR. JIMERSON: Okay. May I have a couple of minutes,  
19 Your Honor, please?

20 Mr. Stevens, what's the tape with the meeting between  
21 Mr. -- Mr. --

22 (Off record discussion between counsel.)

23 THE COURT: Okay. None of this is on the record, so  
24 you all need to not talk to each other. You can have side  
25 conversations, but just tell me what's going on.

1 MR. STEVENS: Yeah. Mr. Warren wanted to play a  
2 portion of Government's Exhibit 7, a portion of a clip. Most  
3 of it was not played by the Government. He asked us to do  
4 that.

5 THE COURT: Okay. So you're going to play that?

6 MR. JIMERSON: Yes, ma'am.

7 MR. STEVENS: It's a portion of Government's  
8 Exhibit 7. I stipulate that that's what it is, and I don't  
9 object.

10 THE COURT: Okay.

11 MR. JIMERSON: Okay. Which is the whole complete  
12 record.

13 THE COURT: Okay. So this is Exhibit 7?

14 MR. STEVENS: Well, Judge, this is --

15 (Off record discussion between counsel.)

16 MR. STEVENS: This is actually a three-minute clip,  
17 Judge, that we had not played in the portion that we played.  
18 Some portions were played and some were not.

19 THE COURT: Okay.

20 MR. STEVENS: All right.

21 THE COURT: You can turn on their -- yeah, I think  
22 they're not quite there yet, but that's okay.

23 (Audio only playing.)

24 THE COURT: Okay. This isn't what you're trying to  
25 play, is it? Is there a video that's supposed to be with

1 this?

2           TECHNICIAN: Yes.

3           THE COURT: Okay. Members of the Jury, we're going  
4 to take like a five-minute recess while they work on this, and  
5 so please remember the instructions I gave you earlier. Don't  
6 communicate with anyone at all about this case or among  
7 yourselves, and please keep an open mind until you've heard  
8 all the evidence. You can step out for five minutes or so,  
9 and we'll call you when we have that ready.

10           (The following proceedings were held outside the hearing  
11 and presence of the Jury.)

12           THE WITNESS: Excuse me, ma'am. Is it okay if I go  
13 to the lavatory?

14           THE COURT: Yeah.

15           THE WITNESS: Okay. Thank you.

16           THE DEFENDANT: Your Honor --

17           THE COURT: Yes.

18           THE DEFENDANT: -- can I say something?

19           THE COURT: Hold on. Wait a minute. No. The  
20 lawyers aren't all here, so I need you to wait, and then you  
21 can when Mr. Stevens gets back.

22           Okay. Mr. Jimerson.

23           MR. JIMERSON: Your Honor, Mr. Warren wants to speak  
24 to the Court about a particular point of evidence, and I --  
25 I --

1 THE COURT: Okay. The Jury is not in here.

2 Mr. Warren, what is it you wish to say?

3 THE DEFENDANT: Okay. There's a part of these tapes  
4 that are missing, that's edited. I asked my lawyer. He said  
5 he had it, but he's not -- when they're playing it, that's not  
6 it because there's a part on there that I'm saying I'm not  
7 going and I'm saying it multiple times, but that is not on  
8 that clip. Now, I've seen it with my Public Defender. He  
9 came and showed it to me. Now, Mr. Jimerson came out and  
10 showed me audio one time, and the audio he came to show me was  
11 last week, and he didn't have it with him. I asked him did he  
12 have it, did he have this, these videos.

13 THE COURT: And what day is this supposed to have  
14 happened?

15 THE DEFENDANT: What day did you come out there last  
16 week?

17 THE COURT: No. I mean what day on the tape.

18 MR. JIMERSON: This is -- this is --

19 THE DEFENDANT: No. That was when I had my Public  
20 Defender before he was hired.

21 THE COURT: Yeah. What -- the video clip you're  
22 talking about --

23 THE DEFENDANT: Up on the third day, on the third  
24 day.

25 THE COURT: The third day, the day you got arrested?

1 THE DEFENDANT: Yeah, the day we got arrested.

2 THE COURT: Okay. Hold on a second.

3 Mr. Stevens, do you have the entire file of whatever  
4 was recorded that day?

5 MR. STEVENS: Yeah, I'm sure I do, Judge. It's Bates  
6 number 110. It was disclosed eight months ago and has the  
7 entirety of that meeting on it. Mr. Jimerson has it.

8 THE COURT: How long is it?

9 MR. STEVENS: Let me see. I don't recall how long it  
10 is from beginning to end, Judge.

11 THE COURT: Are we talking two hours --

12 MR. STEVENS: It's -- no.

13 THE COURT: -- 15 minutes, somewhere in between?

14 MR. STEVENS: Well, it's -- it's played straight  
15 through from Agent Zayas, you know, sitting and waiting to the  
16 car wash to the arrest location and everything else, so maybe  
17 if he's just talking about the car wash, maybe we can get just  
18 to that.

19 MR. JIMERSON: Yeah, this 110 was re-given to me,  
20 Judge, on yesterday, day before yesterday.

21 MR. STEVENS: Uh-huh.

22 MR. JIMERSON: Okay. And I have to find it, but the  
23 portion that he's talking about, I don't hear, but --

24 MR. STEVENS: Well, Mr. Jimerson had suggested that,  
25 that his client had told him there was something he didn't

1 have from the car cash, so I gave him 110 again, which I  
2 disclosed back in June of last year and --

3 THE COURT: And you're saying this is the entire  
4 thing?

5 MR. STEVENS: Yes, it's everything and, I mean, you  
6 know --

7 THE COURT: Well, so, Mr. Jimerson, have you gone  
8 over the whole thing?

9 MR. JIMERSON: I've gone over what I see as 110, and  
10 I've shared that with my client, but he's saying that there's  
11 something missing from that, but I don't know what's missing.  
12 You know, I've looked at the whole thing, so --

13 MR. STEVENS: After we had the discussion in court  
14 yesterday about a clip that Mr. Jimerson and Mr. Lynch wanted  
15 to play, Judge, they came up to my office and gave me a  
16 three-minute clip, and that's exactly what we cut here from  
17 110.

18 THE COURT: Right, but --

19 MR. STEVENS: They chose what -- what we want -- what  
20 they wanted to play here. As far as any other portion --

21 MR. JIMERSON: Can we just play this, I mean, and  
22 just --

23 THE COURT: Yes --

24 MR. JIMERSON: -- if it's there, it's there.

25 THE COURT: -- all of 110. Is there any reason not

1 to?

2 MR. JIMERSON: Yeah, let's just play 110, and then if  
3 it's there, it's there, and then we can play it, I can use it.

4 MR. STEVENS: Well, I mean, does he know whether it's  
5 on this clip or not? Have you showed him this clip?

6 MR. JIMERSON: He's seen those today. I've showed  
7 him the clip, but I don't see it.

8 THE DEFENDANT: I've never seen this clip, Your  
9 Honor.

10 THE COURT: Oh.

11 THE DEFENDANT: I mean I've seen -- I've seen -- I've  
12 seen the clip before. I only seen it the once; that's when my  
13 Public Defender showed it to me. He's never showed it to me.

14 THE COURT: Well, what about this one he has? You're  
15 saying it's different?

16 THE DEFENDANT: Some of it's the same, but there's a  
17 certain part in there when I'm telling him I'm not going. He  
18 says, "Let's go to the car," and I'm telling him I'm not  
19 going, and he says, "Come on, man, we've got to stick  
20 together." I'm like, "Man, I'm not going." And then he kept  
21 on like, "We've got to stick together," and tried to get us to  
22 the car.

23 THE COURT: And you saw this when your Public  
24 Defender showed it to you?

25 THE DEFENDANT: I know I said it, and the Public



1 Defender showed it to me on the first week. I was locked up  
2 for two weeks, and he came up there with it on --

3 THE COURT: Okay. Hold on.

4 MR. STEVENS: Judge, if what he's referring to -- I  
5 mean on this clip that they asked us to cut, there is  
6 Mr. Warren saying -- talking about staying at the car wash  
7 rather than going to the arrest location. If that's what he's  
8 referring to, that is on this clip.

9 MR. JIMERSON: No, that's --

10 THE COURT: Play it for me. How long -- show me this  
11 clip that you've got right here. Let's play it while the Jury  
12 is out.

13 MR. STEVENS: It's three minutes.

14 MR. JIMERSON: No, that's not the one he's asking.  
15 He's saying it happened at the beginning of the tape, and this  
16 is at the end of that, so --

17 THE DEFENDANT: Your Honor, can I speak, please?

18 THE COURT: Yeah.

19 THE DEFENDANT: It's on the -- it's at the meeting  
20 when we at the car wash --

21 THE COURT: Okay.

22 THE DEFENDANT: -- because what happened was -- can I  
23 explain to you what happened? What happened was I told my  
24 friend Mike that he was the police. My friend Mike went and  
25 asked him, "Are you a cop?" I told my friend I'm going to

1 leave. My friend Mike asked, "Are you a cop?" The police  
2 said, "No, I ain't no cop." Then my friend Mike asked him,  
3 "Then why are you trying to get us to do this?" And then he  
4 would explain why he wanted us to do it.

5 THE COURT: Okay. Hold on, hold on, hold on. All  
6 right. You can step down. We're going to call the Jury back  
7 in, send them home, and then I want you to play the entire  
8 thing for me while we're all here in the courtroom, and we can  
9 figure out if there's a discovery problem or not.

10 MR. STEVENS: The entire --

11 MR. JIMERSON: Yeah, I mean --

12 THE CLERK: Go get them?

13 THE COURT: Yeah, if you'll bring the Jury in.

14 MR. JIMERSON: Your Honor, excuse me, Your Honor.

15 THE COURT: Yeah.

16 MR. JIMERSON: Now Mr. Warren is also saying that --  
17 and I don't mean to use the word "now". Mr. Warren is also  
18 saying that on the second day on --

19 THE COURT: Hold on. Let's bring the Jury in, and  
20 we'll send them home, and then we can have this discussion.

21 Go ahead. You may bring them in.

22 (The following proceedings were held within the hearing  
23 and presence of the Jury.)

24 THE COURT: You all may be seated. Members of the  
25 Jury, we're having some technical and other difficulties

1 trying to figure out if we have exactly the right video that  
2 we're trying to show you, and so we're going to need to work  
3 on this, and I'm going to let you go home early today, so you  
4 don't have to wait around while we're having this discussion.  
5 We'll start up at 9:00 a.m. in the morning. When you get here  
6 at 9:00, just go in the jury room. There's a coffeepot in  
7 there. Whoever gets there first can make coffee if you want  
8 it. There's all the stuff in there. It will be open fairly  
9 early. And during this recess, remember what I told you  
10 before. You may not communicate with anyone or do any  
11 research about the case or, you know, talk at all about the  
12 case or about anything connected to it. I know it's natural  
13 when you go home from your first day of actually being in a  
14 trial for your family or whoever you go home to to say, "What  
15 happened? Are you on the Jury? What's going on?" And I know  
16 that partly because my husband's been on jury duty and I asked  
17 him those questions and he always says, "The judge told me not  
18 to talk about it," and so it's natural for them to do that.  
19 So just say to them, "Look, I am on a jury. It's in  
20 Judge Perry's court. It's a criminal case. I'll tell you all  
21 about it at the end of the week when it's over," and that's  
22 really important because it is essential for everyone involved  
23 that we have your decision based on the evidence here in court  
24 and not anything else. So you are excused until 9:00 in the  
25 morning. Just leave your notebooks there on your chairs, and

1 we will deal with them, and thank you very much. I will see  
2 you all in the morning.

3 (The following proceedings were held outside the hearing  
4 and presence of the Jury.)

5 THE COURT: All right. One step at a time.  
6 Mr. Jimerson, what are you saying? You think there's two  
7 tapes we need to watch or two clip videos?

8 MR. JIMERSON: Yes, ma'am. Mr. Warren is saying that  
9 some portion of the conversations that he had on June 4th are  
10 also missing from -- from -- from the DVDs provided by the  
11 Government, particularly, conversation that he had with  
12 Special Agent Zayas about him saying he's not going, this is  
13 a -- this is a setup or something of that nature, and he's  
14 saying that is not on -- on -- I believe it would be 10 -- the  
15 day before would be 109. Is that -- is that accurate?

16 MR. STEVENS: Not necessarily because there are  
17 multiple recordings of each meeting from different views and  
18 everything, but, Judge, I can tell you that the June 4th  
19 meeting, it starts with Agent Zayas walking up and meeting  
20 with them and then leaving. I mean it's -- the entire thing  
21 is on what we've turned over.

22 THE COURT: How long is that meeting?

23 MR. STEVENS: That's relatively short. I think it's  
24 about 10 minutes.

25 THE COURT: Play me the whole meeting.

1 MR. STEVENS: Okay.

2 THE COURT: This is exhibit what? Do you have it  
3 there? Do you have the whole thing?

4 MR. STEVENS: I'll have it in my discovery file,  
5 yeah.

6 MR. JIMERSON: Second and third. Okay. So those are  
7 the second and third meetings, basically, we're playing, is  
8 that correct?

9 MR. STEVENS: You're talking about June 4th and  
10 June 5th, right?

11 MR. JIMERSON: Yes.

12 MR. STEVENS: Okay. I think that would be Disc 106,  
13 Judge, Bates number 106. Actually, Judge, I would have a  
14 transcript of the entire thing, too, if you'd want that.

15 THE COURT: Yeah, that would be helpful.

16 MR. STEVENS: Yeah.

17 THE COURT: And that's all been -- you know, this has  
18 all been turned over, you said, both to Mr. Fehlig and to --

19 MR. STEVENS: Yes.

20 THE COURT: -- and to Mr. Jimerson.

21 MR. STEVENS: That number 106 is the Bates number.  
22 It was turned over as Bates number 106.

23 THE COURT: Actually, I'll just watch the video. I  
24 don't need the transcript.

25 MR. JIMERSON: Is this June 4th?

1 (Video played.)

2 MR. STEVENS: Right here is where we started.

3 (Video played.)

4 MR. STEVENS: Can you stop?

5 MR. JIMERSON: Your Honor, can we stop it, please?

6 THE COURT: Yes.

7 MR. JIMERSON: Mr. Warren said he heard what he  
8 thought was missing within this tape, and therefore, it's --  
9 go ahead.

10 THE DEFENDANT: That's the part I wanted you to argue  
11 about because you said because I told you, and I said --

12 THE COURT: Hold on a minute. You don't want to have  
13 these conversations with us here. You have an attorney/client  
14 privilege. You should not talk to your lawyer with all of us  
15 listening in and on the record, so, Mr. Jimerson, go talk to  
16 Mr. Warren. I mean, Mr. Warren, I've let you address me, and  
17 I would, but, obviously, you shouldn't do that in front of a  
18 jury, and really, you should speak to me through your lawyer  
19 at this -- at this point in the proceedings, and so,  
20 Mr. Jimerson, you all consult, and then you come back and talk  
21 to me.

22 MR. STEVENS: Judge, if -- if I could, and I know  
23 we're not on -- are we on the record?

24 THE COURT: Yeah, we are on the record.

25 MR. STEVENS: The portion that Mr. --

1 THE COURT: Well, hold on a second.

2 MR. STEVENS: Okay. The portion that Mr. Warren  
3 just --

4 THE COURT: Hold.

5 MR. STEVENS: I'm sorry.

6 THE COURT: Okay. Go ahead, Mr. Stevens.

7 MR. STEVENS: The portion that Mr. Warren just  
8 identified as the portion he thought was missing from that  
9 video is one of the clips we actually played in trial.

10 THE COURT: Right, the Jury's already seen that.

11 MR. STEVENS: They have exactly. Not only is it  
12 there, we've played it.

13 THE COURT: Okay.

14 MR. JIMERSON: Okay. Now --

15 THE COURT: Mr. Jimerson.

16 MR. JIMERSON: Thank you, Your Honor. That -- for  
17 that video, we're okay. Okay. Now he wants to play the  
18 June 5th one.

19 THE COURT: The June 5th one. Okay. Can you play  
20 the June 5th one?

21 MR. STEVENS: That's -- for the record, Judge, that's  
22 Bates number 110.

23 MR. JIMERSON: Is that 110 you're playing?

24 MR. STEVENS: Yes.

25 MR. JIMERSON: Okay.

1 (Video played.)

2 MR. JIMERSON: Any way to fast-forward to the meeting  
3 where they were having the conversation?

4 MR. STEVENS: Is that okay with you, Judge?

5 THE COURT: Yeah.

6 (Video played.)

7 THE COURT: What happened there?

8 MR. STEVENS: That's -- it's broken into two  
9 sessions, Judge. It's when the memory runs out on one and  
10 picks up on another one.

11 THE COURT: Okay.

12 (Video played.)

13 THE COURT: Okay. Can we stop it there? Are we  
14 correct that -- I mean now we're going to have the part in the  
15 car that we've already seen, and we're not worried about that  
16 part, right?

17 THE DEFENDANT: Your Honor, I've seen another CD  
18 already, but what I'm saying -- I'm not going. I don't know  
19 what happened to this CD, but it's not in there.

20 THE COURT: So you're claiming there's some other CD  
21 somewhere?

22 THE DEFENDANT: It's the same meeting.

23 THE COURT: From the car wash?

24 THE DEFENDANT: The same meeting, yes.

25 THE COURT: Okay. Well, you know what? You have a



1 right to testify in this trial if you wish to testify, and you  
2 can talk to your lawyer about that.

3 Mr. Stevens, I mean, before I foreclose it, are you  
4 telling me this is the only part that exists?

5 MR. STEVENS: Yes, Judge. Everything on this,  
6 everything -- this is from Agent Zayas' point of view -- this  
7 camera. Everything that was recorded by that is on this disc.

8 THE COURT: And have I seen everything that happened  
9 at the car wash that has been recorded?

10 MR. STEVENS: Well, there are other camera views.  
11 There's the long-distance surveillance.

12 THE COURT: Right, but --

13 MR. STEVENS: But yes, yeah.

14 THE COURT: -- where you can hear people talking --

15 MR. STEVENS: Yes, right.

16 THE COURT: -- this is -- I've now seen everything?

17 MR. STEVENS: This is the extent of it, yes.

18 THE COURT: And you're telling me there is nothing  
19 more?

20 MR. STEVENS: That's correct.

21 THE COURT: And you've verified with your agents and  
22 everybody else this is all there is.

23 MR. STEVENS: Yes. Right.

24 THE COURT: Okay. Well, then I'm satisfied. The  
25 Government's evidence can proceed, and I will -- we'll proceed

1 tomorrow, and you can proceed however you wish, Mr. Jimerson.

2 Okay?

3 MR. JIMERSON: Thank you, Your Honor.

4 THE COURT: So court's in recess until 9:00 a.m.

5 THE DEFENDANT: Your Honor --

6 THE COURT: Yes, Mr. Warren. Here, come up to the  
7 lectern and speak if you wish to speak.

8 THE DEFENDANT: So there's no other way I can prove  
9 that we can get them to see if this video has been edited, has  
10 been altered in some type of way.

11 THE COURT: Well, I don't -- I don't -- what is it  
12 you're saying?

13 THE DEFENDANT: I'm saying because there's a certain  
14 part of the video that's missing when he asks them, "Let's go  
15 to the trap car," and I tell him I'm not going.

16 THE COURT: You know, how are you going to -- what  
17 evidence do you have or what are you telling -- why do you  
18 believe that's true?

19 THE DEFENDANT: I mean because I know where a CD of  
20 it is at.

21 THE COURT: You do know where a CD of it is at?

22 THE DEFENDANT: Yes. It's my -- my -- my --

23 WOMAN IN GALLERY: Public Defender.

24 THE DEFENDANT: My Public Defender gave my brother my  
25 discovery to find me a lawyer, and it's in that CD, and I can

1 have him hand it to Mr. Jimerson today.

2 THE COURT: Your brother has it?

3 THE DEFENDANT: Yes.

4 MR. JIMERSON: May I speak?

5 THE COURT: Yeah.

6 MR. JIMERSON: Okay. I called -- you know, if my  
7 client believes something is missing, I'm not here to  
8 challenge that, but I've talked to Mr. Warren, his brother  
9 Everett, who gave me the numbers -- apparently his --  
10 Mr. Warren's Public Defender prior to that had gone out to  
11 visit him and also gave the tapes to Mr. Warren's brother.

12 THE COURT: Right. And this was Mr. Fehlig who was a  
13 Court-appointed attorney?

14 MR. JIMERSON: Yes, ma'am. And Mr. Fehlig -- I'm  
15 sorry. Mr. Fehlig, well, left some discs with Mr. Warren's  
16 brother, and Mr. Warren told me they were disc number 110,  
17 117, and those things. I looked at those tapes. I've shared  
18 those tapes with -- at least the ones that he told me from  
19 what I received from Mr. Fehlig.

20 THE COURT: Okay.

21 MR. JIMERSON: Okay. I've shared those discs with  
22 Mr. Warren, Mr. Daryl Warren, and this is all I know. Now  
23 he's saying that something else exists.

24 THE COURT: Well, here's what I -- here's what I  
25 suggest. If your client believes that his brother has some

1 disks that we haven't seen in this courtroom, he needs to  
2 bring them to you, and you need to look at them and see what  
3 you need to do, and what we'll do is we'll move forward  
4 tomorrow, and then if you have these, he needs -- if he's got  
5 family members, they need to have them here for you, you know,  
6 tonight or in the morning, and then if we need to, we'll take  
7 some time while you look at them, but we are moving forward  
8 with this, and if there is -- you know, at this point, I have  
9 no reason to believe that the evidence has been tampered with,  
10 but if Mr. Warren believes his brother has some DVDs, then,  
11 you know, you'll need to get those and see what's what.

12 MR. STEVENS: Could I just add something for the  
13 record, Judge?

14 THE COURT: You may.

15 MR. STEVENS: It sounded to me -- excuse me; I'm  
16 sorry -- from what Mr. Warren said that he's claiming that  
17 what he has seen before that is not on this tape was something  
18 that was disclosed in discovery, so it would have come from  
19 me, obviously. So I just want to make that clear for the  
20 record. I think what he said was what he's claiming is not on  
21 this, on this disc, is something he saw in discovery that was  
22 produced by us.

23 THE COURT: Right. And what you're saying is what  
24 you just showed me is everything you've ever had --

25 MR. STEVENS: Exactly.

1 THE COURT: -- and ever produced in discovery, and I  
2 understand that's what you're saying, and I understand what  
3 Mr. Warren is saying, and if Mr. Warren's relatives have  
4 something that Mr. Warren thinks will help him out, they  
5 better get it to Mr. Jimerson ASAP. Okay?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. I'll see you all at 9:00 in  
8 the morning.

9 MR. STEVENS: Thank you, Judge.

10 (Court adjourned at 4:57 p.m.)  
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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 269 inclusive.

Dated at St. Louis, Missouri, this 26th day of July, 2014.

---

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter